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

Administration OF JUSTICE Memorandum

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1987 Legislation Affecting Criminal Law and Procedure

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This memorandum will summarize acts of the 1987 General Assembly affecting criminal law and procedure. Each new law discussed is referred to by the 1987 Session Laws chapter number of the ratified act and by the number of the original bill that became law—for example, Ch. 693 (H 541). 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 the reader should be aware that the Codifier of Statutes may change that number.

The statutory changes are not reproduced here, since the 1987 advance legislative service of the Michie Company will soon be complete. For magistrates, prosecutors, and other criminal justice officials, a supplement to *Arrest Warrant Forms* will be available from the Institute of Government in a few months; the 1987 changes will be incorporated. You may obtain a free copy of any bill by writing the Printed Bills Office, State Legislative Building, Raleigh, North Carolnia 27611, or by calling that office at 919-733-5648. Your 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 Caroliana Legislation 1987* [which may be ordered from the Institute of Government Publications Office: 919-966-4119.] Legislation affecting mental health commitments and civil matters will be discussed by Joan G. Brannon in a separate memorandum that will be sent to district court judges and magistrates.

New Trespass Laws

Ch. 700 (H 979) adds two new trespass offenses, effective for acts committed on or after October 1, 1987: *First-Degree Trespass* (G.S. 14-159.12) and *Second-Degree Trespass* (G.S. 14-159.13). It repeals, effective for acts committed on or after October 1, 1987, the following offenses: *Trespass on land after being forbidden* (G.S. 14-134)(this offense is charged in AOC-CR-101); *Forcible entry and detainer* (G.S. 14-126); *Demonstrations, etc. in public buildings* (G.S. 14-132.1); and *Taking unlawful possession of another's house* (G.S. 14-143). Although these repealed offenses may not be charged for acts committed on or after October 1, 1987, charges and prosecutions after October 1, 1987 may continue to be brought for acts committed before October 1, 1987.

Note that the crime of *Domestic criminal trespass* (G.S. 14-134.3) and the common law crime of forcible trespass were *not* repealed. These offenses may continue to be charged. The following discussion of the elements of the new trespass offenses is presented in the format used in *North Carolina Crimes* in order to make it readily accessible to users of that book.

First-Degree Trespass (G.S. 14-159.12)

A person is guilty of this offense if that person:

(1) without authorization

(2) (a) enters, *or*
(b) remains
(3) (a) on premises of another so enclosed or secured as to demonstrate an intent to keep out intruders, *or*
(b) in a building of another.

Punishment Misdemeanor punishable by maximum imprisonment of six months and/or a maximum fine of $1,000.

General The basic distinction between first- and second-degree trespass is the strength of interests in privacy, possession, and control of premises protected by the offenses. The crime of first-degree trespass involves stronger interests and, therefore, more serious violations of privacy, possession, and control of premises.

Notes **Element (1).** Without authorization probably means the same as without consent in breaking or entering offenses. See page 112 of **North Carolina Crimes**.

Element (2). See page 107 of **North Carolina Crimes** for definition of "entering." "Remains" means to stay.

Element (3)(a). Premises include the entire piece of real estate—the building and the land. A fenced-in area surrounding all or a part of the premises may satisfy this element.

Element (3)(b). First-degree trespass is committed if a person enters a building (home, business, etc.) after previously having been been forbidden or remains after having been ordered to leave. Thus, this offense is essentially the same as the now-repealed trespass after being forbidden (G.S. 14-134), when the trespass involves the entering or remaining in a building without authorization. For example, if a homeowner tells the defendant—when the defendant is inside his house—to leave, and the defendant refuses to do so, or if the homeowner tells the defendant never to come back onto this property again but the defendant comes back and enters the homeowner's house, the defendant has committed first-degree trespass. This

This offense also prohibits many of the same acts (at least those of "entering") that are prohibited by misdemeanor breaking or entering—see page 113 of *North Carolina Crimes*.

G.S. 14-159.11 defines "building" as any structure or part of a structure, other than a conveyance, enclosed so as to permit reasonable entry only through a door and roofed to protect it from the elements.

Lesser-included offense G.S. 14-159.14 provides that First- and Second-Degree Trespass are lesser-included offenses of breaking and entering in G.S. 14-54 (felonious and misdemeanor breaking and entering building) and G.S. 14-56 (felonious breaking or entering motor vehicle, railroad car, etc.), even though there appears to be no difference in the elements of misdemeanor breaking or entering under G.S. 14-54(b) and first-degree trespass with respect to unauthorized entry of a building.

Second-Degree Trespass (G.S. 14-159.13)

A person is guilty of this offense if that person:

(1) without authorization
(2) (a) enters, *or*
(b) remains
(3) on premises of another
(4) (a) after having been notified not to enter or remain there by the owner, a person in charge of premises, a lawful occupant, or another authorized person, *or*
(b) when the premises are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

Punishment Misdemeanor punishable by maximum imprisonment of 30 days and/or a maximum fine of $200.

Notes **Elements (1) and (2).** See the notes for Elements (1) and (2) under First-Degree Trespass.

Element (3) Premises include the entire piece of real estate—the building and the land.

Element (4)(a). This element makes second-degree trespass the same as the now-repealed trespass after being forbidden (G.S. 14-134). For example, if a homeowner tells the defendant to leave his front yard and the defendant refuses, or if he tells the defendant never to come back onto his property again but the defendant enters the property, the defendant has committed second-degree trespass. However, if the unauthorized entering or remaining occurs in a building, First-Degree Trespass should be charged.

"Another authorized person" could include an agent of the owner or occupant of the premises.

Element (4)(b). This element may be satisfied by posting of "No trespassing" or similar signs in a manner reasonably likely to come to an intruder's attention. Proof that the intruder actually saw the signs is not required.

Lesser-included offense G.S. 14-159.14 provides that First- and Second-Degree Trespass are lesser-included offenses of breaking and entering in G.S. 14-54 (felonious and misdemeanor breaking and entering building) and G.S. 14-56 (felonious breaking or entering motor vehicle, railroad car, etc.).

Drug Law Changes

Trafficking in LSD. Ch. 640 (S 829) adds a new subdivision G.S. 90-95(h)(4a) to create the felony of trafficking in lysergic acid diethylamide (LSD). [G.S. 90-95(h)(1)-(4) already prohibit trafficking in marijuana, methaqualone, cocaine, and opium or heroin.] The act defines the new offense as selling, manufacturing, delivering, transporting, or possessing 100 or more tablets, capsules, or other dosage units, or the equivalent quantity of LSD or any mixture containing LSD. The act also creates three levels of punishment according to the quantity involved: (1) trafficking in 100-499 dosage units or an equivalent quantity is a Class G felony, punishable by minimum imprisonment of seven years, maximum imprisonment of 15 years, and a minimum fine of $25,000 (no presumptive sentence is applicable); (2) trafficking in 500-1,000 dosage units or an equivalent quantity is a Class F felony, punishable by minimum imprisonment of 14 years, maximum imprisonment of 20 years, and a minimum fine of $50,000 (no presumptive sentence is applicable); and (3) trafficking in more than 1,000 dosage units or an equivalent quantity is a Class D felony, punishable by minimum imprisonment of 35 years, maximum imprisonment of 40 years, and a minimum fine of $200,000 (no presumptive sentence is applicable). The new act is effective October 1, 1987.

Ch. 640 also clarifies sentencing options for all drug trafficking offenses established under G.S. 90-95(h) by amending G.S. 90-95(h)(5) to state that a defendant sentenced for drug trafficking may not receive a suspended sentence or be placed on probation except as permitted by G.S. 90-95(h)(5) and to provide that a person sentenced for drug trafficking as a committed youthful offender becomes eligible for release or parole no earlier than a regular offender. This portion of Ch. 640 became effective July 20, 1987.

Definition of cocaine and coca leaves. Ch. 105 (S 216), effective October 1, 1987, clarifies the definition of prohibited forms of cocaine in the following statutes: G.S. 90-87(17)(d) (defining forms of cocaine and coca leaves designated as "narcotic drugs"); G.S. 90-90(a)(4) (identifying forms of cocaine and coca leaves classified as Schedule II controlled substances); G.S. 90-95(d)(2) (identifying forms of cocaine and coca leaves for which possession of at least one gram is a Class I felony); and G.S. 90-95(h)(3) (identifying forms of cocaine and coca leaves subject to offense of trafficking in cocaine). The act also clarifies the meaning of the term "isomer" in several statutes in G.S. Chapter 90.

Scheduling controlled substances. Ch. 412 (H 878), effective June 18, 1987, makes scheduling additions and changes for numerous controlled substances in G.S. Chapter 90. The act also permits licensed physicians to dispense or administer Dronabinol [scheduled as a controlled substance in new G.S. 90-90(e), created by Ch. 412] only as an antiemetic agent in cancer chemotherapy.

Ch. 413 (H 879), effective June 18, 1987, amends G.S. 90-88 to modify the administrative procedures that the Commission for Mental Heath, Mental Retardation, and Substance Abuse Services must follow when adding, deleting, or rescheduling substances or deciding whether to adopt federal law changes in scheduling substances.

New, Amended, or Repealed Crimes

Eliminating death penalty for some defendants under 17. Ch. 693 (H 541) amends G.S. 14-17 to eliminate the death penalty for first-degree murder for a defendant who is younger than 17 at the time of the murder and to set life imprisonment as the mandatory sentence for such a defendant. The act retains the death penalty as a possible sentence (along with life imprisonment) for such a defendant if he commits first-degree murder while serving a prison sentence for a prior murder or while on escape from a prison sentence for a prior murder. The act became effective July 29, 1987 and applies only to defendants indicted on or after that date.

Defense to rape and sexual offenses. Ch. 742 (S 751) slightly modifies the defense against rape and sexual offenses set forth in G.S. 14-27.8. Currently, that statute provides that a person may not be prosecuted for those crimes if he is the victim's spouse at the time of the offense, unless the defendant and victim are living apart under a written agreement or judicial decree. Effective October 1, 1987, Ch. 742 provides that the spousal defense does not apply to a case if the defendant and victim live apart, regardless of whether their separation is formalized in a written agreement or judicial decree.

Disorderly conduct on college campuses. Ch. 671 (H 1107), effective July 24, 1987, clarifies G.S. 14-288.4(a)(4)a., concerning the offense of disorderly conduct by refusing to vacate a building or facility of an educational institution when ordered to do so by the institution's chief administrative officer or his representative. The act specifies that for colleges and universities, such a representative includes the vice chancellor for student affairs or

equivalent, the dean of students or equivalent, and the director and chief of the campus law enforcement or security department.

Forgery of transcripts and diplomas. Ch. 388 (H 1189), effective October 1, 1987, entirely rewrites G.S. 14-122.1, concerning forgery of certain educational documents. It prohibits the following acts: (1) falsely making or falsely altering a diploma, certificate, license, or transcript from a secondary school, postsecondary school, or governmental agency, or procuring or aiding such conduct; (2) conveying or obtaining such documents that are known to be false, or procuring or aiding such conduct; (3) using as genuine a falsely made or falsely altered diploma, certificate, license, or transcript that the user knows is false; or (4) making a false written statement about past receipt of a degree or certification of achievement in an application for employment, admission to an educational program, or an award, or to induce someone to issue a diploma, certificate, license, or transcript. Although the punishment provision of the act is unclear, it probably makes any violation a general misdemeanor, punishable by maximum imprisonment of two years and/or a fine.

Prohibiting weapons in courthouses. Ch. 820 (H 124), effective August 13, 1987, amends G.S. 14-269.4 to expand the prohibition against possession of a deadly weapon on designated state property to prohibit such possession in courthouses. If a court is located in a building also used for nonpublic purposes, the prohibition applies only to the portion of the building (such as a magistrate's office) used for court purposes and only during such use. The act exempts possession of a weapon as evidence, for delivery to a law enforcement agency, or for registration. Other exemptions currently in the law are retained, e.g., for state or local officers who are responsible for executing laws and are authorized by law to carry weapons.

Physical abuse of patients or residents in care facilities. Ch. 527 (H 354), adds a new G.S. 14-32.2, effective October 1, 1987, to prohibit physical abuse of a health care facility patient or residential care facility resident if the abuse results from an intentional or culpably negligent act or omission that causes serious bodily injury or death. The act establishes three levels of punishment: (1) a person who violates the act through intentional conduct causing death is guilty of a Class C felony, punishable by maximum imprisonment of 50 years or life and/or a fine (presumptive sentence 15 years); (2) a person who violates the act through culpably negligent conduct causing death is guilty of a Class G felony, punishable by maximum imprisonment of 15 years and/or a fine (presumptive sentence four and one-half years); and (3) a person who violates the act by causing serious bodily injury is guilty of a Class H felony, punishable by maximum imprisonment of ten years and/or a fine (presumptive sentence three years). The act states that defenses arising under G.S. 90-321(h) or 90-322(d) (protecting the withholding or discontinuing of extraordinary medical procedures to prolong life under specified circumstances) apply to this act. Also, only a district attorney (*not* an assistant district attorney) can request the issuance of criminal process (arrest warrant and criminal summons) to charge a crime under this act. Since a magistrate's order, which is issued after an officer's warrantless arrest, is not criminal process, an officer may make a warrantless arrest without a district attorney's request. However, an officer may want to consult with the district attorney before doing so.

Conflicts of interest. Ch. 570 (S 854) amends G.S. 14-234, which prohibits conflicts of interest involving public officials, to increase the maximum dollar amount of certain kinds of contracts exempted from the statute's prohibitions by G.S. 14-234(d1)(v). The act raises the ceiling for exempt contracts from $5,000 to $15,000 per year for contracts for provision of goods and nonmedical services between municipalities, counties, or designated types of local agencies and designated types of medical personnel appointed to a county social services board, local health board, or area mental health board in sparsely populated, rural counties.

Misuse of confidential information. Ch. 616 (H 960), effective July 14, 1987, adds new G.S. 14-234.1 to prohibit an officer or employee of the state or its political subdivisions, in contemplation of his official action or his governmental unit's official action or relying on non-public information that he gained in his official capacity (1) to acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by the non-public information or official action, or (2) intentionally aid another to commit any such acts. Violation of this statute is a misdemeanor punishable by a fine and up to two years' imprisonment.

Shoplifting punishment exception; civil remedy. G.S. 14-72.1(e) permits a judge to require a defendant to perform community service instead of serving a term of imprisonment for certain shoplifting convictions. Ch. 660 (S 795), effective July 23, 1987, permits judges to impose a different appropriate sentence if they set forth in the judgment their finding that the defendant is unable, because of mental or physical infirmity, to perform community service.

Ch. 519 (S 818) increases a shoplifter's civil liability [it also applies to a violation of G.S. 14-74 (larceny by employee)]. New G.S. 1-538.2 adds a treble damages provision in a civil action against a shoplifter, but the statute also provides that the total of all damages may not exceed $1,000. The new law also holds parents liable for their child's shoplifting if the parents know or should have known of the child's propensity to commit such an act, had the opportunity to control the child, and made no reasonable effort to restrain the child. Ch. 519 applies to acts committed on or after October 1, 1987.

Adulteration or misbranding of food, drugs, or cosmetics. Ch. 313 (S 692) adds new G.S. 14-34.4, effective October 1, 1987, to prohibit the following acts concerning adulteration or misbranding of food, drugs, or cosmetics if committed with the intent to cause serious injury or

death: adulterating or misbranding food, drugs, or cosmetics, or making, selling, delivering, offering, or holding for sale adulterated or misbranded food, drugs, or cosmetics, in violation of G.S. 106-122. Ch. 313 also forbids individuals from communicating to anyone else that they have violated or intend to violate these prohibitions. Violation of the act is a Class C felony, punishable by maximum imprisonment of 50 years or life and/or a fine (presumptive sentence 15 years).

Interfering with emergency communications. Ch. 690 (H 1033) adds a new G.S. 14-286.2, effective October 1, 1987, to prohibit anyone not making an emergency communication from intentionally interfering, without authorization, with an emergency radio communication. A violation is a misdemeanor punishable by maximum imprisonment of six months and a maximum fine of $500. The act provides for greater punishment if the interference causes serious bodily injury or property damage of over $1,000: maximum imprisonment of one year and a maximum fine of $1,000.

Flying while impaired. Effective October 1, 1987, Ch. 818 (S 668) rewrites G.S. 63-27 and 63-28 (concerning operating an aircraft while impaired), amends G.S. 63-26 (tampering with an aircraft), and adds a new G.S. 63-26.1 to prohibit trespassing on airport property. The act rewrites G.S. 63-27 to prohibit operation of an aircraft in the air, on the ground, or on water, while impaired. A person violates the act if he operates an aircraft while under the influence of an impairing substance or if he has consumed sufficient alcohol to result in a blood alcohol level of at least 0.04 at any relevant time after operating the aircraft. Violation of the act is a misdemeanor, punishable by maximum imprisonment of two years and/or a maximum fine of $1,000 (currently, violation of G.S. 63-27 is punishable by maximum of 60 days and/or a maximum fine of $100). Second and subsequent offenses are Class J felonies, punishable by maximum imprisonment of three years and/or a fine (presumptive sentence one year). The act provides that anyone operating an aircraft gives implied consent to a blood alcohol analysis if they are charged with the offense. The chemical analysis is to be performed according to the procedures established in G.S. Ch. 20 for chemical analysis in cases of impaired driving. In addition, the act directs the charging officer to notify the local office of the Federal Aviation Administration if the charged operator refuses to submit to a test. Ch. 818 states that the otherwise lawful use of alcohol or a drug is not a defense to this crime.

The act rewrites G.S. 63-28, which prohibits infliction of serious bodily injury while violating G.S. 63-27, by increasing the severity of the offense from a Class J felony (punishable by maximum imprisonment of three years and/or a fine; presumptive sentence one year) to a Class H felony (punishable by maximum imprisonment of ten years and/or a fine; presumptive sentence three years), and by specifying that the otherwise lawful use of alcohol or a drug is not a defense to this crime. Ch. 818 amends G.S. 63-26 to include going on, entering, tampering with, or damaging personal property controlled or used by a public or private airport or aircraft landing facility to the kinds of conduct prohibited by the statute. The act also increases the punishment for violating the statute from maximum imprisonment of 60 days and/or a maximum fine of $100 to maximum imprisonment of two years and/or a maximum fine of $5,000.

Finally, the act adds a new statute, G.S. 63-26.1, to prohibit trespassing on airport property, which it defines as property controlled or used by a public or private airport or aircraft landing facility. It is a violation of the new statute if, without authorization, a person enters or remains on airport property that is enclosed, posted, or secured in a way that clearly demonstrates an intent to keep intruders out. Violation of the statute is a misdemeanor, punishable by maximum imprisonment of six months and/or a maximum fine of $2,500.

Bingo amendments. Ch. 701 (H 1004) amends G.S. 14-309.12, concerning "beach bingo," effective January 1, 1988. That term refers to bingo games with maximum prizes of $10 or merchandise with a maximum value of $10 that is not redeemable for cash. The act prohibits holding a beach bingo game in conjunction with any other lawful bingo game, with any promotional bingo game, or with any offering of a chance to gamble. Violation of these prohibitions is a Class H felony, punishable by maximum imprisonment of ten years and/or a fine (presumptive sentence three years).

Ch. 866 (H 10) would have amended, effective September 1, 1987, G.S. 14-309.7(a) to transfer the responsibility of issuing bingo licenses and handling audit reports from the Department of Revenue to the Department of Human Resources and to set a $100 annual license fee. However, Ch. 866's effective date was contingent on appropriation of funds for personnel and other administrative expenses to implement the act. Since funds were not appropriated, the act will not take effect.

Littering penalties and enforcement. Ch. 757 (S 131) rewrites G.S. 14-399(d), the section setting the punishment for littering. Currently, the section sets the maximum fine at $50 for the first offense and $200 for any subsequent offense. Effective October 1, 1987, Ch. 757 increases the possible fines to a minimum of $50 and a maximum of $200 for the first offense and a minimum of $50 and a maximum of $300 for a subsequent offense. Also, the act authorizes a judge to impose a term of community service in lieu of part or all of a fine or in addition to a fine.

Ch. 208 (H 345), effective May 18, 1987, authorizes wildlife law enforcement officers to enforce the littering law.

Hunter must wear "hunter orange." Ch. 72 (H 150) adds new G.S. 113-291.8 to make it an infraction to fail to wear "hunter orange" clothing when hunting big game (bear, deer, or wild boar). Violation of the infraction carries a penalty of $25, but court costs may not be assessed.

It is effective for the 1988 hunting season, but warning tickets may be issued in the 1987 hunting season.

Miscellaneous

Crime Victims Compensation Act changes. Although the 1983 General Assembly enacted a Crime Victims Compensation Act, no funds were appropriated to implement it until this session, when one million dollars was appropriated for each fiscal year of the 1987-89 biennium. The act will provide compensation for a crime victim's unreimbursed losses (but excluding property loss) up to a maximum of $20,000. Dependents of a homicide victim may also qualify for compensation. Ch. 819 (H 57) makes several changes to the Act, which is codified in G.S. Chapter 15B. (1) Victims of offenses that are committed on or after August 13, 1987 are eligible for compensation. (2) Prior law completely prohibited compensation for conduct resulting from the use of a motor vehicle; now, the prohibition will apply only if the conduct is only punishable by motor vehicle law. Thus an injury caused by a criminal assault committed with a motor vehicle may be compensated. (3) Both "dependent's replacement service loss" (services lost by the victim's death) and an injured victim's work loss will be limited to a 26-week period from the date of the injury or death and compensation may not exceed $200 per week. (4) It deletes a $10 filing fee that would have been required with each application for compensation. (5) It revises the procedures for awarding claims. The Director of the Crime Victims Compensation Commission will decide a compensation claim if it does not exceed $5,000 or does not include future economic loss. The Director will recommend a decision to the Commission for claims he cannot decide. A dissatisfied claimant can begin a contested case under the Administrative Procedure Act. (6) A claimant must file his claim within one year (prior law specified two years) of the criminal conduct that caused the injury or death. (7) The Director must send written notice of any award to the clerk of court of the county in which the offense occurred. The clerk must place that notice in the case file of any defendant charged with that offense. (8) Ch. 819 permits, but does not require (as in the prior law), the law enforcement agency that investigates an offense to inform a victim and his dependents of the existence of compensation for crime victims. (9) It permits a judge to require a criminal defendant to pay restitution to the Crime Victims Compensation Fund or to a victim, even if the victim receives compensation from the Fund.

Bail bond changes. Ch. 321 (H 898), effective October 1, 1987, amends G.S. 15A-544, the bail bond forfeiture statute, to give a principal (criminal defendant) on a bail bond 60 days instead of 30 days to appear before a judge to satisfactorily explain the failure to appear in court.

Ch. 481 (S 202), effective October 1, 1987, amends G.S. 15A-534(b) and 15A-535(a) to provide that when a judicial official imposes a secured bond as a condition of pretrial release, written reasons must be given for doing so *if* the senior resident superior court judge's pretrial release policy requires this.

Ch. 728 (H 137), effective August 5, 1987, amends G.S. 85C-36 to make clear that the prohibition against a professional bondsman acting as a surety on a bail bond whose sum exceeds one-fourth of the value of securities deposited with the Commissioner of Insurance applies as well to the sum of all bail bonds for one defendant concerning all charges resulting from one transaction or related transactions.

Arrest for violation of domestic violence court order; definition of domestic violence. Ch. 739 (S 409), effective October 1, 1987, amends G.S. 50B-4(b) to make clear that a law enforcement officer may arrest a person without a warrant or other court process when there is probable cause to believe that the person has violated a court order excluding the person from a domestic violence victim's residence or directing the person to refrain from harassing the victim and the officer is presented with a copy of the order or determines that such an order exists and learns of its contents by phone, radio, or other communication.

Ch. 828 (H 1208) amends G.S. 50B-1, effective October 1, 1987, amends G.S. 50B-1 to exclude acts committed against a minor child from the definition of domestic violence.

Appeals of most life sentences go to Court of Appeals. Ch. 679 (S 145), effective for life sentences imposed on or after July 24, 1987, amends G.S. 7A-27(a) to provide that appeals go directly to the North Carolina Supreme Court only for first-degree murder cases (for which the punishment is death or life imprisonment). Before this amendment, appeals of all life sentences (which included cases of second-degree murder, first-degree rape and sexual offense, and others) went directly to the Supreme Court. Now, these cases will be heard first in the North Carolina Court of Appeals.

Defendant's interlocutory appeal. If a district court judge dismisses a criminal charge before trial, a prosecutor may appeal to a superior court judge to seek to overturn the district court judge's dismissal. If the superior court judge overturns the district court judge's dismissal, the case then is remanded to district court for trial. Ch. 398 (H 1175), effective October 1, 1987, amends G.S. 15A-1432(d) to permit, under certain conditions, a defendant—before the case is remanded to district court—to appeal to the appellate division to seek to overturn the superior court judge's ruling.

Timing of appeal when pending motion for appropriate relief. Ch. 624 (S 679), effective July 16, 1987, repeals G.S. 15A-1448(a)(4), which provided that if a trial judge did not rule on a motion for appropriate relief (a

post-trial motion alleging error during the trial or sentencing hearing) within ten days after the motion was made, the motion was considered denied. The repealed provision's main effect was to require a party to file notice of appeal even though the trial judge had not in fact acted on the motion. Now a party will be able to await the judge's ruling before being required to file notice of appeal, which must be filed within ten days after the ruling.

State Bureau of Investigation (SBI) investigative authority. Ch. 867 (H 432), effective August 14, 1987, amends G.S. 114-15 to authorize the SBI, at the Governor's request, to conduct a background investigation (criminal record, educational background, employment and credit records, and records about listing and paying taxes) of a person the Governor plans to nominate for a position that must be confirmed by the General Assembly or only by the Senate or House of Representatives.

Ch. 858 (H 726), effective August 14, 1987, amends G.S. 114-15 to authorize the SBI, at the request of the Governor or Attorney General, to investigate the commission or attempted commission of various criminal offenses involving secret societies like the Ku Klux Klan, communicating threats, misuse of explosives, rioting, and the like.

UNC campuses establish law enforcement agencies. Ch. 671 (H 1107), effective October 1, 1987, adds new G.S. 116-40.5 to authorize the board of trustees of any constituent institution of UNC to establish a law enforcement agency and to employ campus police officers. Campus police officers will have the powers of law enforcement officers generally and must satisfy the standards established in G.S. Ch. 17C (Ch. 671 also amends G.S. 15A-402 to give a campus police officer the authority of any other law enforcement officer to arrest a person outside the officer's jurisdiction while in hot pursuit). In addition, Ch. 671 authorizes boards of trustees to enter into agreements with municipal or county governing boards to extend the jurisdiction of campus police officers into any or all of the municipality's or county's jurisdiction (an agreement with a county requires the sheriff's consent). The act further authorizes the head of a campus law enforcement agency to provide temporary help to other law enforcement agencies under G.S. 160A-286.

Company police may charge infraction. Ch. 469 (H 671), effective June 24, 1987, amends G.S. 74A-2(b) to make clear that a company police officer may charge an infraction as well as arrest for felonies and misdemeanors.

Radar testing amendment. G.S. 8-50.2(c) requires that radar equipment be tested for accuracy by a technician who has at least a second-class or general radiotelephone license from the Federal Communications Commission (FCC) and that the testing be done within six months before a speeding violation. Ch. 318 (H 737), effective June 8, 1987, amends G.S. 8-50.2(c) to (1) allow the technician to have—instead of an FCC license—a certification issued by an organization endorsed by the FCC, and (2) require that the equipment be tested for accuracy within twelve months of a violation.

Firearm permit amendments. Ch. 518 (S 680), effective June 30, 1987, amends the firearm permit laws, G.S. 14-404 and 14-409.3, to (1) include protecting oneself or family as a permissible reason for possessing a firearm, and (2) make clear that a permit may not be issued to a person who is prohibited from purchasing a firearm under the Felony Firearms Act, Article 54A of Chapter 14.

Election reports. Ch. 691 (H 1088) adds new G.S. 163-69.2 to require clerks to report quarterly to the county board of elections the name, address, and county of residence of persons convicted of felonies in the county each quarter. The clerk has 45 days to report. For purposes of this requirement, quarters end in March, June, September, and December. The act became effective with the quarter ending September 30, 1987.

Magistrate's worthless check jurisdiction; dishonored check charge. The jurisdiction of magistrates and clerks to accept written appearances, waivers of trial, and pleas of guilty in worthless check cases was increased to cases involving checks up to $1,000 by Ch. 355 (H 145). In addition, the new law allows magistrates who are assigned to hear not guilty pleas in worthless check cases to hear cases involving checks up to $1,000. Ch. 355 applies to pleas entered on or after October 1, 1987.

Ch. 147 (S 215), effective May 7, 1987, amends G.S. 25-3-512 to increase from $10 to $15 the fee merchants may charge for dishonored checks if they post a conspicuous sign indicating the fee for returned checks.

Criminal child support cases expedited. Ch. 346 (S 327), effective June 12, 1987, amends G.S. 50-31(1) to include a criminal action within the definition of "[c]hild support case" under the expedited process for child support cases in Article 2 of Chapter 50 of the General Statutes. The effect of this amendment is unclear, since much of Article 2 appears to be directly applicable only to civil child support cases. For example, the use of a magistrate or clerk to hear a criminal case in district court under the expedited process in G.S. 50-33 through -39 appears inappropriate in North Carolina's trial de novo system. One statute that may apply to a criminal case (even though its wording is more appropriate to civil cases) is G.S. 50-32, which requires that, except when paternity is disputed, a district court judge in all child support cases must dispose of the case from filing to disposition within 60 days, except the judge may extend this period up to 30 additional days if the party or attorney cannot be present for the "hearing" (presumably this term means trial in a criminal case) or the parties consent to an extension. The sanction for failing to comply with the time limits of G.S. 50-32 is not a dismissal, but if the failure to comply becomes prevalent in many cases, the sanction may be the institution of the expedited process mechanism—which appears inappropriate in criminal cases. Thus, the ramifications of Ch. 346 are unknown.

Motor Vehicle Law

Driving while impaired (DWI) law changes. Ch. 139 (H 78) adds new G.S. 20-179(k1), effective May 5, 1987 and applicable to pending cases, to allow judges, in sentencing persons convicted of driving while impaired, to give credit to a defendant for time spent in an alcoholism and drug abuse inpatient facility. The credit applies only to jail sentences served as a condition of special probation and may be allowed only for time spent in the facility after the commission of the offense (but it may include time spent before trial). A defendant may receive the credit only once in each seven years.

The definition "offense involving impaired driving" in G.S. 20-4.01(24a) sets out the offenses that (a) trigger a mandatory jail term upon a subsequent conviction, (b) extend the period of license revocation, (c) subject a driver to a chemical test of breath or blood, or (d) subject the driver to possible forfeiture of a vehicle if he drives after conviction. Ch. 658 (S 597), effective October 1, 1987, amends this definition to include a second-degree murder conviction, if the conviction is based on impaired driving.

One provision of the 1983 Safe Roads Act requires most people convicted of DWI to attend an Alcohol and Drug Traffic School (ADETS) as a condition of probation. Certain repeat offenders or persons with high alcohol concentrations may also be required to be assessed for an alcohol or drug problem, and if one is identified, to obtain treatment. For nonresidents convicted in this state, meeting these requirements imposed a hardship. Similar hardships faced North Carolinians convicted in other states with similar laws. Ch. 352 (S 700) adds new G.S. 20-179.2 and amends G.S. 20-179(m) to allow the Department of Human Resources to enter into reciprocal arrangements with other states that will allow attendance at these programs in one's state of residence, regardless of the place of conviction. This act became effective June 12, 1987.

The assessment procedure in G.S. 20-179(m) is rewritten by Ch. 797 (S 508). Current law requires assessments of all persons convicted in two cases: (1) those who had an alcohol concentration of 0.20 or more are included; and (2) repeat offenders who had an alcohol concentration of 0.10 or more or who refused to take a test. If the assessment indicates that the person has a substance abuse problem, he must be ordered to be treated.

Ch. 797 makes several important changes in the current law, and in addition it directs the Division of Mental Health, Mental Retardation, and Substance Abuse to establish a pilot program encompassing even more substantial changes in the program (the pilot program will not be discussed in this memorandum). The changes in the current law, effective for sentencing for convictions occurring after January 1, 1988 and expiring June 30, 1989 (the pilot program becomes effective statewide on July 1, 1989) are as follows: (1) the criteria used to detemine which people must be assessed are changed to include convicted defendants who had an alcohol concentration of 0.15 or more and all convicted defendants who refuse a chemical test of breath or blood; (2) the fee charged to conduct the assessment is raised to $50; (3) all agencies performing assessments must notify local and state mental health agencies before doing so; (4) all assessments must use a standardized test designated by the Department of Human Resources, as well as a clinical interview; (5) all assessments must be approved by a certified counselor; (6) if the assessment reveals a need for treatment, the judge may order that it be done, but is not required to (as under current law); (7) the course of treatment may not last more than 90 days unless the defendant has a prior offense or had an alcohol concentration of 0.15 or higher; (8) defendants ordered to complete treatment are not eligible to be licensed to drive (except they may be issued a limited driving privilege) unless they have completed the court-ordered treatment and the Division of Motor Vehicles has been notified of that fact by the treatment agency.

Altering motor vehicle engine numbers. Ch. 512 (H 1094) amends G.S. 20-109(a), the crime of altering engine numbers and other motor vehicle identification numbers, from a misdemeanor (punishable by maximum imprisonment of two years and/or a fine) to a Class J felony (punishable by maximum imprisonment of three years and/or a fine; presumptive sentence one year). The act became effective June 29, 1987.

Higher maximum speed limit. Ch. 164 (H 431) amends G.S. 20-141(d)(2), effective May 8, 1987, to permit the Department of Transporation to set the speed limit not to exceed that allowed by applicable federal law (65 m.p.h.) on any part of the Interstate Highway System that it is safe to do so.

School activity bus speed limit. Ch. 337 (H 1019), amends G.S. 20-218(b)(1), effective June 10, 1987, to increase the speed limit for school activity buses and activity buses of nonprofit organizations to 55 m.p.h.

Driver's license law. Any driver who is denied a license or whose license is revoked by the Division of Motor Vehicles is entitled to a hearing in superior court. Usually a superior court judge will enter a restraining order to prevent a revocation from taking effect until the court decides the matter. Ch. 659 (S 748), effective October 1, 1987, amends G.S. 20-25 to provide that a district court judge "shall have limited jurisdiction under this section to sign and enter a temporary restraining order only." However, it does not give a district court judge the authority to try a license revocation case on its merits.

Ch. 581 (H 761), effective for offenses committed on or after July 9, 1987, amends G.S. 20-24(c) to repeal North Carolina's "90-day failure law." That law had provided that anyone charged with a motor vehicle offense would, for driver's license purposes, be treated as having been convicted if: (1) they failed to appear in court when the case was scheduled, and (2) they failed within 90 days thereafter to submit to the jurisdiction of the court to answer the charge. Ch. 581 also repealed G.S. 20-7.2, which provided that a driver could not renew the license (or even

get a duplicate license) if there was a 90-day failure on his record. The 90-day failure law was no longer needed after the enactment of G.S. 20-24.1, because that section mandates a license revocation if a defendant fails to appear in court or pay a fine, penalty, or costs.

Probation, Parole, and Restitution

Clarification of eligibility for community service parole. Like the 1985 session, the 1987 session clarified the rules for eligibility for community service parole, in which the parolee "works off" remaining time in prison by performing 32 hours of community service per 30 days of prison time. One of the eligibility criteria for community service parole in G.S. 15A-1371(h) and 15A-1380.2(h) is that the prisoner be "serving his first active sentence the term of which exceeds one year." The question arose whether a prisoner who was admitted to prison for the first time with two or more sentences would be eligible. Ch. 47 (S 120), effective April 6, 1987, provides that prisoners meet this criterion if: (1) they were convicted or sentenced in the same session of court of multiple offenses arising from the same transaction; (2) they are serving an active sentence of at least one year for *one* of the multiple offenses; and (3) they have not received an active sentence of at least one year in length before being sentenced for these multiple sentences.

Increased supervision fee for probation and parole. G.S. 15A-1343(c1) and 15A-1374(c) require a supervision fee to be imposed as a condition of probation or parole, except that the court may exempt a probationer from paying the fee for good cause and the Parole Commission may exempt a parolee if it would be an undue economic burden. Ch. 579 (H 42), amended by Sec. 17, Ch. 830, effective September 1, 1987, amends these statutes to raise the fee to $15 per month. Ch. 830 also makes the fee increase retroactive—that is, to make it apply to persons who were on probation or parole as of September 1, 1987, and to persons whose offenses occurred before that date but received probation or parole for those offenses after that date.

Restitution: getting at the offender's assets. Ch. 397 (H 1162), effective for all offenses committed on or after October 1, 1987, amends G.S. 15A-1343(d), concerning restitution to the crime victim imposed as a condition of probation, to require that the court, in considering the resources of the defendant, take into account "all real and personal property owned by the defendant and the income derived from such property . . ." Ch. 397 amends G.S. 148-33.2(b) and -(c) to provide that when the Secretary of Correction orders restitution to the crime victim as a condition of inmate work release (which the Secretary may do if the sentencing court recommends it), restitution may be ordered not only "out of" the inmate's work-release income but also "out of" his real and personal property. G.S. 148-57.1 allows the Parole Commission to impose restitution as a condition of parole if the sentencing court has recommended it. Ch. 397 requires the Commission, when considering restitution, to take into consideration the defendant's resources including real and personal property, ability to earn, and obligation to support dependents.

Payment for rehabilitation of child abuse victims. Ch. 598 (H 397) amends several statutes to provide for the payment of treatment for certain children. G.S. 7A-650(b1), in the Juvenile Code, already provided for the judge to conduct a special hearing to determine whether the parents of an abused, neglected, dependent, undisciplined, or delinquent juvenile should be ordered to participate in medical, psychiatric, psychological, or other treatment. As amended, the subsection also provides for the judge to determine whether the parents should be ordered to pay the costs of such treatment.

The act amends other statutes to address criminal cases involving offenses in which there is evidence of physical, mental, or sexual abuse of a minor. In such cases, (1) G.S. 15A-1343(b1) and -1021(d) provide that the judge should encourage the minor and the parents or custodians to participate in rehabilitative treatment and that the judge may, as a special condition of probation or part of a plea arrangement, order the defendant to pay the costs of such treatment; (2) G.S. 148-57.1(c) authorizes the judge to order as a condition of parole that the defendant pay the cost of any rehabilitative treatment for the minor; and (3) G.S. 148-33.2(c) authorizes the court to order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor.

These amendments apply to any person who is sentenced or any juvenile dispositional hearing that is held on or after October 1, 1987.

Child Abuse and Neglect

Psychologist-client privilege in child abuse and neglect cases. Ch. 323 (H 1023), effective June 8, 1987, amends G.S. 7A-551 and 8-53.3 to provide that the psychologist-client privilege does not apply to the psychologist's testimony about child abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which child abuse or neglect is in issue or in any judicial proceeding resulting from a report submitted under the child abuse/neglect reporting law.

Judge to consider impact of continuance on child abuse victim. Ch. 137 (S 37), effective October 1, 1987, amends G.S. 15A-701(b)(7) to require that when judges consider whether to grant a continuance under the speedy trial law in a child abuse case involving a victim or witness who is under 16, they must consider whether further delay would have an adverse impact on the child.

"Abused juvenile" definition. The portion of the Juvenile Code definition of "abused juveniles" that addresses sexual abuse, G.S. 7A-517(1)c., is rewritten by Ch. 695 (H 637), effective July 29, 1987. The primary change

is the use of more precise references to statutes that define criminal conduct that may bring the minor victim within the definition of "abused juvenile" for purposes of the Juvenile Code. Under the new law, an "abused juvenile" includes an unemancipated minor whose parent or other person responsible for his care commits, permits, or encourages the commission of a violation of any of the following laws by, with, or upon the juvenile: (1) first degree rape (G.S. 14-27.2); (2) second degree rape (G.S. 14-27.3); (3) first degree sexual offense (G.S. 14-27.4); (4) second degree sexual offense (G.S. 14-27.5); (5) sexual act by a custodian (G.S. 14-27.7); (6) crime against nature (G.S. 14-177); (7) incest (G.S. 14-178 and -179); (8) preparation of obscene photographs, slides, or motion pictures of the juvenile (G.S. 14-190.5); (9) employing or permitting the juvenile to assist in a violation of the obscenity laws (G.S. 14-190.6); (10) dissemination of obscene material to the juvenile (G.S. 14-190.7 and -190.8); (11) displaying or disseminating material harmful to the juvenile (G.S. 14-190.14 and -190.15); (12) first and second degree sexual exploitation of the juvenile (G.S. 14-190.16 and -190.17); (13) promoting the prostitution of the juvenile (G.S. 14-190.18); and (14) taking indecent liberties with the juvenile (G.S. 14-202.1) regardless of the age of the parties.

Detention and Custody of Juveniles

Delinquent juveniles—short-term commitments. Chapter 100 (H 186) rewrites G.S. 7A-652(c) to (1) clarify that a delinquent juvenile may not be committed (to the Division of Youth Services for placement in a residential facility) for a period of time in excess of the period for which an adult could be committed for the same act, and (2) add a requirement that any juvenile committed for an offense for which an adult would be sentenced to 30 days or less be assigned to a local or regional detention home instead of a training school. The act applies to juveniles committed on and after October 1, 1987.

Grounds for secure custody. Chapter 101 (H 187), effective October 1, 1987, adds an additional ground for placing a juvenile in secure custody—that is, in temporary detention in a local or regional detention home pending adjudication of the offense with which the juvenile is charged. New G.S. 7A-574(b)(1.1) authorizes a judge to order secure custody when a juvenile is charged with a misdemeanor at least one element of which is an assault.

Detention of juvenile bound over to superior court. Under the Juvenile Code, a juvenile's case may be transferred from district to superior court, to be tried like an adult's case, if the juvenile is alleged to have committed a felonious offense while 14 or 15 years old. Chapter 144 (H 188), effective October 1, 1987, rewrites G.S. 7A-611, which governs where such a juvenile may be detained during various stages of his case. As rewritten, the section continues to provide that once the order of transfer has been entered, the juvenile is entitled to pretrial release as provided in G.S. 15A-533 and 15A-534. Formerly, it went on to provide that pending the juvenile's release, the judge was authorized to order that the juvenile be detained in a juvenile detention home or a separate section of a local jail as provided by G.S. 7A-576—an outdated reference, since that section no longer permits detaining juveniles in jails. Now G.S. 7A-611 section provides that pending the juvenile's release, the judge (1) must order that the juvenile be detained in a local or regional detention home while awaiting trial, and (2) may order that the juvenile be held in a holdover facility—a jail location, approved by DHR, where the juvenile cannot converse with, see, or be seen by the adult jail population—any time the juvenile's presence is required in court for pretrial hearings or trial, if the judge finds that it would be inconvenient to return the juvenile to the detention home.

Additions to the section provide that (1) if the juvenile receives an active sentence after being found guilty or entering a plea of guilty or no contest in superior court, the court must order an immediate transfer to the Department of Correction; (2) pending transfer to the Department of Correction, the juvenile may be detained in a holdover facility but not a local or regional detention home; and (3) the Department of Correction may act as a safekeeper until the juvenile is placed in an appropriate correctional program.

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