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Administration OF JUSTICE Memorandum

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1989 Legislation Affecting Criminal Law and Procedure

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This memorandum will summarize acts of the 1989 General Assembly affecting criminal law and procedure. Each new law is referred to by the 1989 Session Laws chapter number of the ratified act and by the number of the original bill that became law—for example, Chapter 690 (H 275). 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 is used (with the abbreviation G.S.), though the reader should be aware that the codifier of statutes may change that number.

The statutory changes are not reproduced here. 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. Your request should be by bill number rather than chapter number.

Some of the material in this memorandum is excerpted from chapters by Institute of Government faculty members in *North Carolina Legislation 1989* (which may be ordered from the Institute of Government's Publication Office at 919-966-4119).

Drug Law Changes

New drug trafficking offenses. Two new drug trafficking offenses were enacted, both taking effect for offenses committed on or after October 1, 1989. Chapter 672 (S 712) adds a new subdivision (3a) to G.S. 90-95(h) to create the felony of trafficking in amphetamine. The act defines the new offense as selling, manufacturing, delivering, transporting, or possessing 1,000 tablets, capsules, or other dosage units, or the equivalent quantity of amphetamine (and its salts, optical isomers, and salts of its optical isomers) or any mixture containing amphetamine. The act creates three levels of punishment according to the quantity involved: (1) Trafficking in 1,000 dosage units but less than 5,000 dosage units or equivalent quantity is a Class G felony and is punishable by a minimum imprisonment of seven years, a maximum imprisonment of fifteen years, and a minimum fine of $25,000 (no presumptive sentence is applicable). (2) Trafficking in 5,000 dosage units but less than 10,000 dosage units or an equivalent quantity is a Class F felony, punishable by a minimum imprisonment of fourteen years, a maximum imprisonment of twenty years, and a minimum fine of $50,000 (no presumptive sentence is applicable). (3) Trafficking in 10,000 or more dosage units or equivalent quantity is a Class D felony, punishable by a minimum imprisonment of thirty-five years, a maximum imprisonment of forty years, and a minimum fine of $200,000 (no presumptive sentence is applicable).

Chapter 690 (H 275) adds a new subdivision (3b) to G.S. 90-95(h)(4) to create the felony of trafficking in methamphetamine. The act defines the new offense as selling, manufacturing, delivering, transporting, or possessing 28 grams or more of methamphetamine. The act creates three levels of punishment according to the quantity involved: (1)

Trafficking in 28 grams or more but less than 200 grams is a Class G felony, punishable by a minimum imprisonment of seven years, a maximum imprisonment of fifteen years, and a minimum fine of $50,000 (no presumptive sentence is applicable). (2) Trafficking in 200 grams or more but less than 400 grams is a Class F felony and is punishable by a minimum imprisonment of fourteen years, a maximum imprisonment of twenty years, and a minimum fine of $100,000 (no presumptive sentence is applicable). (3) Trafficking in 400 grams or more is a Class D felony, punishable by a minimum imprisonment of thirty-five years, a maximum imprisonment of forty years, and a minimum fine of $250,000 (no presumptive sentence is applicable).

Possessing any amount of cocaine or phencyclidine made a felony. Effective for offenses committed on or after October 1, 1989, Chapter 641 (S 77) amends G.S. 90-95(d)(2) to make possession of any amount of cocaine or phencyclidine a Class I felony (maximum sentence of five years, presumptive sentence of two years). Before this change, possession of less than one gram of cocaine or possession of less than one-half gram of phencyclidine was a misdemeanor.

Distributing cocaine resulting in death made second-degree murder. Effective for offenses committed on or after October 1, 1989, Chapter 694 (S 961) amends G.S. 14-17 to include within the offense of second-degree murder a murder proximately caused by the unlawful distribution of cocaine when the ingestion of that cocaine causes the user's death.

Excise tax on controlled substances. Effective January 1, 1990, Chapter 772 (S 699) adds new Article 2D to General Statutes Chapter 90 to levy an excise tax on controlled substances and counterfeit controlled substances possessed by a "dealer" (defined below) at the following rates: (1) $3.50 for each gram (or fraction thereof) of marijuana or counterfeit marijuana; (2) $200 for each gram (or fraction thereof) of any other controlled substance or counterfeit controlled substance that is sold by weight; and (3) $400 for each 10-dosage unit (or fraction thereof) of any other controlled substance that is not sold by weight. A "dealer" is a person who, in violation of G.S. 90-95, possesses, delivers, sells, or manufactures more than 42.5 grams of marijuana, 7 or more grams of any other controlled substance or counterfeit controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance. The secretary of revenue is to issue tax stamps to dealers who have paid the tax; the stamps are to be affixed to the controlled substances. The tax is payable within forty-eight hours after the dealer acquires a nontax-paid controlled substance or counterfeit controlled substance. (If that time falls on a weekend or legal holiday, then it is due the next working day.) A dealer who fails to pay the tax is guilty of a Class I felony and is subject to an additional penalty of 100 percent of any tax due. The law sets out the procedure by which the secretary may collect the tax due, including jeopardy assessments under G.S. 105-241.1(g) or procedures under G.S. 105-242 (which includes the sale of real and personal property).

Chapter 772 adds new G.S. 114-18.1 to require a state or local law enforcement agency to report to the State Bureau of Investigation (SBI) the arrest of a person possessing a controlled substance or counterfeit controlled substance; the report must be made within forty-eight hours of the arrest. The same reporting requirement applies to the seizure of these substances. The reports must include the time and place of arrest or seizure, the amount and location of the substance, and the identification of any person possessing the substance. Chapter 772 also amends G.S. 114-19 to require the SBI to notify the Department of Revenue of all reports received under G.S. 114-18.1 on a daily basis.

Chapter 772 amends G.S. 90-112(c) (a provision of the drug forfeiture statute) to require that a state or local law enforcement agency must hold seized property in safekeeping until a judge enters an order for its disposition.

New and Amended Crimes

Punishment increased for conspiracy or solicitation to commit murder. Chapter 734 (S 714), effective for offenses committed on or after October 1, 1989, adds new G.S. 14-18.1 to make the punishment for conspiracy to commit murder or solicitation to commit murder a Class E felony (maximum sentence of thirty years, presumptive sentence of nine years); formerly, it was a Class H felony (maximum sentence of ten years, presumptive sentence of three years). However, if the conspiracy to commit murder or solicitation to commit murder is of a law enforcement officer, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant while the person was engaged in performing official duties or because of the person's exercise of official duties, Chapter 734 makes the punishment a Class D felony (maximum sentence of forty years, presumptive sentence of twelve years). (Note that if the Class D felony punishment is to be imposed, the victim and the victim's official status

and duties probably must be alleged in the indictment and proven at trial.)

Crime of financial-transaction card fraud expanded. Chapter 161 (H 1106) is effective for offenses committed on or after October 1, 1989. The legislation adds a new subsection (c1) to G.S. 14-113.13 to make financial-transaction card fraud punishable under G.S. 14-113.17(a) when a person who is authorized to accept a financial-transaction card or account number for goods, services, etc., submits to the card-issuing financial institution or business organization a record of a sale that was not made and does so with the intent to defraud. The legislation also adds new G.S. 14-113.15A (criminal factoring of financial-transaction card records) to make it a Class J felony (maximum sentence of three years, presumptive sentence of one year) when a person solicits a merchant to remit for payment a record of a sale (involving a financial-transaction card) that was not made.

Littering law revised. Chapter 784 (S 111), effective for offenses committed on or after October 1, 1989, repeals G.S. 14-399.1 (dumping litter on the property of another) and makes several changes to G.S. 14-399 (littering): (1) it makes clear that the statute applies to littering on a lake, river, or ocean; (2) it greatly expands the definition of "litter" (e.g., it includes discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations); and (3) it permits enforcement by an employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

The punishment for littering is also changed. Littering for a noncommercial purpose in an amount not exceeding 15 pounds or 27 cubic feet is a misdemeanor punishable by a minimum $50 fine and a maximum $200 fine ($500 fine for a second offense). However, such littering on a beach is punishable by a $50 to $500 fine. In addition, the court may require the violator to pick up litter or perform other similar labor. Littering for a noncommercial purpose in an amount exceeding 15 pounds or 27 cubic feet but not exceeding 500 pounds or 100 cubic feet is a misdemeanor punishable by a minimum $50 fine and a maximum $500 fine. In addition, the court may require the violator to pick up litter or perform other similar labor. A person who commits this violation by using a motor vehicle and is found guilty (even if no sentence is imposed) will receive one driver's license point under G.S. 20-16(c). Littering in any quantity for commercial purposes, littering in an amount exceeding 500 pounds or 100 cubic feet, or dumping litter that is a hazardous waste as defined in G.S. 130A-290 is a Class J felony (maximum sentence of three years, presumptive sentence of one year). In addition, the court may order the violator to remove or render harmless the litter the violator dumped, repair or restore the property damaged by the littering, pay damages resulting from dumping the litter, and perform community service.

Chapter 784 also provides that a motor vehicle, vessel, aircraft, etc., involved in disposing of more than 500 pounds or 100 cubic feet of litter is contraband and is subject to seizure and forfeiture to the state. If a person sustains damage from a felony violation of G.S. 14-399, a court in a civil action for damages must order the violator to pay the injured party three times the actual damages or $200, whichever amount is greater. The court also must order the violator to pay the injured party's court costs and attorneys' fees.

Chapter 784 repeals Chapter 491 of the 1989 Session Laws, which made changes to G.S. 14-399 concerning littering a beach.

Tax evasion penalties increased. Chapter 557 (H 272), effective for offenses committed on or after December 2, 1989, amends (1) G.S. 105-236(7) (tax evasion, including income tax evasion) to increase the punishment from that of a misdemeanor to a Class I felony (maximum sentence of five years, presumptive sentence of two years), but limits the maximum fine to $25,000; (2) G.S. 105-236(8) (failing to collect or pay withholding tax) to increase the punishment from that of a misdemeanor with a maximum $1,000 fine to a misdemeanor with an unlimited maximum fine and to increase the statute of limitations from two to three years; (3) G.S. 105-236(9) (willful failure to file return, supply information, or pay tax) to increase the statute of limitations from two to three years; and (4) G.S. 105-236(9a) (aiding in filing a fraudulent return or document) to increase the punishment from that of a misdemeanor to a Class J felony (maximum sentence of three years, presumptive sentence of one year), but limits the maximum fine to $10,000. Chapter 557 also sets out a tax amnesty program from September 1, 1989, through December 1, 1989, for a variety of state taxes, including income taxes.

Threatening phone call crime clarified. Chapter 305 (H 501), effective for offenses committed on or after October 1, 1989, amends G.S. 14-196 (using profane or threatening language over the telephone) to make clear that the offense includes communica-

tions made or received by a telephone answering machine or recorder, telefacsimile machine, or computer modem.

Purchase of up to five liters of liquor without a permit. Chapter 553 (S 759), effective July 1, 1989, amends G.S. 18B-303 (and makes conforming changes in the *prima facie* evidence rule in G.S. 18B-304) to increase from four to five liters the amount of spirituous liquor or fortified wine a person may purchase and transport without a permit.

Felony firearm act amended to include rape and sexual offense convictions. Chapter 770 (S 525), effective August 12, 1989, amends G.S. 14-415.1(b)(1) (prohibiting a convicted felon from possessing a firearm) to include a felony conviction for an offense in Article 7A (first- and second-degree rape and sexual offense, etc.) as one that prohibits a felon from possessing a firearm. Article 7A inadvertently was not added to this statute when the article supplanted now-repealed Article 7 several years ago.

Larceny of dog made a felony. Chapter 773 (S 832), effective for offenses committed on or after October 1, 1989, amends G.S. 14-81 to make larceny of a dog a Class J felony (maximum sentence of three years, presumptive sentence of one year). Chapter 773 also adds dogs to the provisions of G.S. 14-82 (misdemeanor of taking horses or mules for temporary purposes).

Animal cruelty fines increased. Chapter 670 (H 1296), effective for offenses committed on or after October 1, 1989, amends G.S. 14-360 (cruelty to animals), G.S. 14-361 (instigating cruelty to animals), and G.S. 14-363 (conveying animals in a cruel manner) to increase the maximum fines from $1,000 to $1,500 and amends G.S. 14-361.1 (abandoning animals) to increase the maximum fine from $500 to $1,000.

Public hospital board of directors added to self-dealing exemption. Chapter 231 (H 979), effective June 5, 1989, amends G.S. 14-234(d1) to add public hospital boards of directors to those officials who have a limited exemption from the contractual self-dealing prohibitions of the statute.

Officer's failure to return process must be willful. Chapter 462 (H 1274), effective for offenses committed on or after October 1, 1989, amends G.S. 14-242: (1) to require as an element of the offense that an officer's refusal to return process or to make a false return is willful and (2) to delete the $100 civil penalty for a violation of the statute (See General Statutes Chapter 162 for civil penalty provisions).

Interfering with peak-load electrical device. Chapter 119 (H 597), effective for offenses committed on or after October 1, 1989, adds a new subsection (b2) to G.S. 14-151.1 (interfering with electric, gas, or water meters) to prohibit an unauthorized person from altering or interfering with a peak-load electrical management device, unless the electric supplier has not removed the device within two working days of a customer's written request to remove it. This new offense is punishable by the section's current misdemeanor provision—imprisonment of up to two years and a maximum $500 fine.

Machine gun and submachine gun redefined. Chapter 680 (S 170), effective for offenses committed on or after October 1, 1989, amends G.S. 14-409 and G.S. 14-409.9 (unlawful possession and sale of machine gun and submachine gun) to redefine a machine gun or submachine gun as a weapon that shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. The definition also includes the weapon's frame or receiver, any combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if the parts are in one's possession or control.

Student's grade change for money or article of value. Chapter 144 (S 221), effective for offenses committed on or after October 1, 1989, amends G.S. 14-118.2 to make clear that the statute (1) prohibits the giving or changing of a grade or test score (or offering to do so) in exchange for an article of value or money and (2) includes the acts of a teacher or other school official.

Sexual harassment in renting residential property prohibited. Chapter 712 (S 260), effective for offenses committed on or after October 1, 1989, adds new G.S. 14-395.1 to prohibit a lessor of residential real property (or agent) from harassing on the basis of sex any lessee or prospective lessee of the property. "Harass on the basis of sex" is defined as unsolicited overt requests or demands for sexual acts when submission to them is a term of the execution or continuation of the lease or when submission to or rejection of such conduct is used to determine whether rights under the lease are granted. A violation of the statute is a misdemeanor punishable by a maximum term of imprisonment of six months and a maximum $200 fine.

Nondegradable plastic yokes or ring-type holding devices prohibited. Chapter 371 (S 359), effective for offenses committed on or after January 1, 1990, adds new G.S. 14-399.2 to prohibit the sale or distribution of nondegradable plastic yoke or ring-type holding devices. A violation of the statute is a

misdemeanor punishable by a minimum $50 fine and maximum $200 fine.

Unauthorized taking or selling of labeled dairy milk case or crate. Chapter 303 (S 546), effective for offenses committed on or after January 1, 1990, adds new G.S. 14-72.4 to prohibit the unauthorized taking or selling of a dairy milk case or milk crate bearing the owner's name, refusing to return it on demand, or defacing the business name on the case or crate. A violation of the statute is a misdemeanor punishable by a maximum term of imprisonment of six months and a maximum $300 fine.

Counterfeit recording law amendments. Chapter 589 (S 834) is effective November 1, 1989, but does not affect litigation pending as of that date. The chapter makes several amendments to the counterfeit recording law in Article 58 of Chapter 14. (1) It limits the current offenses in G.S. 14-433, recodified as subdivisions (a)(1) and (a)(2) of that section, to those sound recordings that were initially fixed before February 15, 1972. (The act states that federal copyright law preempts state prosecution for recordings initially fixed on or after that date.) (2) It adds two new offenses in G.S. 14-433 to make unlawful (no matter when the recording was initially fixed) the knowing transfer of sounds at a live concert to an "article" (defined as the tangible medium on which sounds are recorded) with the intent to sell it or to manufacture the article. (3) It makes a violation of any provision of Article 58 (i) a Class I felony (maximum sentence of three years, presumptive sentence of two years, but limiting the fine to $150,000) if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio-visual recordings during any 180-day period (or if it is a second offense as specified in the act), (ii) a misdemeanor punishable by a maximum two years' imprisonment and $25,000 fine if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio-visual recordings during any 180-day period, or (iii) a misdemeanor punishable by a maximum term of imprisonment of six months and a $1,000 fine, if neither of the previous punishment provisions apply. (4) The chapter requires the court, for any conviction of the article, to order the forfeiture and destruction or other disposition of all infringing articles and all implements used in their manufacture.

Slot machine definition amended. Chapter 406 (S 874), effective October 1, 1989, applies the definition of slot machine in G.S. 14-306 to various gambling statutes: G.S. 14-296 (slot machine defined); G.S. 14-301 and -302 (operating or possessing a slot machine); G.S. 14-304 (manufacturing a slot machine); and G.S. 14-305 (slot machine agreements). Chapter 406 also amends G.S. 14-306 to make clear that the exception of the definition of slot machine includes devices manufactured for amusement only, the operation of which depend on the player's "dexterity" (or "skill," which is retained from the former definition).

Ginseng crimes revised and transferred. Chapter 508 (H 758), effective October 1, 1989, repeals (but with a savings clause to permit pending prosecutions) G.S. 14-392 (digging ginseng on another's land) and G.S. 14-393 (records of ginseng purchases), but incorporates their provisions in G.S. 106-202.19.

Sacramental wine in prisons and jails. Chapter 106 (H 837), effective May 16, 1989, amends G.S. 14-258.1, which prohibits giving alcoholic beverages to prisoners and jail inmates, to permit an ordained minister or rabbi to give sacramental wine to them as part of a religious service.

Crime of secreting secured property includes refusing to surrender property to law enforcement officer. It is a misdemeanor under G.S. 14-115 to secrete, exchange, or remove secured personal property with the intent to hinder the enforcement of the security interest after an order or judgment has been issued for possession of the property. Chapter 401 (H 1054), effective for offenses committed on or after October 1, 1989, amends G.S. 14-115 to specifically include within the statute's prohibitions (in addition to secreting, exchanging, or removing the property) the refusal to surrender such property to a law enforcement officer.

Criminal Procedure and Other Changes

Speedy trial law repealed. Chapter 688 (S 730), effective October 1, 1989, repeals Article 35 of Chapter 15A, thereby repealing the entire speedy trial law. Chapter 688 adds a new subsection (g) to G.S. 15A-952 to provide that in district or superior court, a judge must consider in determining whether to grant a continuance the factors that are virtually the same as those listed in now-repealed G.S. 15A-701(b)(7)a through -701(b)(7)e.

Defendant must be informed of immigration consequences of guilty plea. Chapter 280 (S 761), effective January 1, 1990, amends G.S. 15A-1022 to require a superior court judge to inform a defendant (who is not a United States citizen) pleading guilty or no contest that the plea may result in deportation, exclusion from admission to the United States, or the denial of naturalization under federal law.

Law enforcement agency employees may serve subpoena and criminal summons. Chapter 262, ef-

fective October 1, 1989, makes several significant changes in serving a subpoena and criminal summons. It amends Rule 45(e) of the Rules of Civil Procedure, which also applies to criminal cases, to permit the sheriff, deputy sheriff, or designee who is eighteen years old or older and not a party to serve a subpoena. Former law permitted only the sheriff or deputy sheriff to serve a subpoena. Thus the new law will permit a sheriff's department civilian employee to serve subpoenas if the sheriff designates the employee to do so. Chapter 262 also amends G.S. 8-59 to allow an employee of a local law enforcement agency (e.g., sheriffs', county, or municipal departments) to serve a subpoena by telephone for the attendance of a witness. (Former law only allowed a law enforcement officer with arrest authority to do so.) Thus civilian employees may now serve telephone subpoenas. Chapter 262 amends G.S. 15A-301 to permit a civilian employee of a local law enforcement agency designated by the agency's chief executive officer to serve a criminal summons at the agency's office when a defendant has been called there to receive the summons.

Secured bond may have restrictions. Chapter 259 (H 427), effective October 1, 1989, amends G.S. 15A-534 to permit a judicial official ordering pretrial release under secured bond to place restrictions on the defendant's travel, associations, conduct, or place of abode (which are already specifically permitted for the other forms of release—written promise to appear, unsecured bond, and custody release).

Auto club arrest bond limit raised. Chapter 663 (S 357), effective July 20, 1989, amends G.S. 109-40 to increase from $1,000 to $1,500 the maximum amount permitted for an auto club arrest bond certificate.

Detention of defendant for AIDS or hepatitis B infection testing. Chapter 499 (H 1149), effective for offenses committed on or after October 1, 1989, adds new G.S. 15A-534.3, which states that if a judicial official conducting an initial appearance or first appearance finds probable cause that a person was exposed to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or hepatitis B infection the official must order the defendant detained for a reasonable period, not to exceed twenty-four hours, for investigation by public health officials and testing (if required by those officials under G.S. 130A-144 and 130A-148).

Bank employee's affidavit may be used in worthless check prosecution. Chapter 421 (H 1234), effective for offenses committed on or after October 1, 1989, amends G.S. 14-107.1 to make admissible in any hearing or trial in district court for a violation of G.S. 14-107 (worthless checks) an affidavit by a bank employee who has personal knowledge of the facts in the affidavit. The affidavit is admissible as evidence of the dishonor of the check (including the existence of the account), the date the check was processed, whether there were sufficient funds in the account to pay the check, and "other related matters." The defendant must be provided a copy of the affidavit before trial and must have the opportunity to subpoena the affiant for trial.

Prison cap, community service parole, and safekeeping changes. Chapter 1 (S 40), effective February 1, 1989, makes several changes affecting prison population. It amends G.S. 148-4.1 (but this amendment expires July 1, 1991) by modifying the prison cap so that when the prison population is at 17,640 or more inmates for fifteen days, there must be a mandatory reduction of the population to 17,460 inmates within ninety days. In meeting the mandatory reduction, (1) all misdemeanants in prison (except those convicted of an impaired driving offense) immediately become eligible for parole and termination of supervision regardless of when they were admitted and (2) the Parole Commission may not parole solely under this section (G.S. 148-4.1) those convicted of drug trafficking, kidnapping, or rape or sex offenses under Article 7A of Chapter 14. (These prisoners continue to be covered by existing parole eligibility law.) The commission also may exercise its discretion under G.S. 15A-1371 to refuse to parole felons so long as the prison population does not exceed 18,000. (This provision does not apply to most felons in prison—just those sentenced under the law before the Fair Sentencing Act.)

Chapter 1 amends G.S. 15A-1371(h)(1) and 15A-1380.2(h)(1) to redefine community service parole eligibility to include a prisoner serving an active sentence whose term exceeds six months (formerly, it only included prisoners serving their first active sentences whose terms exceeded one year), but it bars community service parole to those convicted of drug trafficking, kidnapping, felonious restraint, abduction of children, and rape and sexual offenses under Article 7A of Chapter 14. It also permits the Parole Commission to terminate a prisoner's community service parole "before the expiration of the term of imprisonment" (apparently this phrase means before the parolee has completed all the community service hours corresponding to the parolee's remaining active sentence). Chapter 1 amends G.S. 15A-1372(d) to allow the commission simultaneously to parole and terminate supervision of a prisoner serving a misdemeanor

sentence other than a sentence for an impaired driving offense. Finally, Chapter 1 amends G.S. 162-39 to provide that county prisoners incarcerated in the state prison system as safekeepers (generally, pretrial detainees transferred for safety or security reasons) may not exceed 200 unless authorized by the secretary of correction. When the limit is reached, the secretary may refuse to accept a safekeeper and return any safekeeper that already had been accepted.

Service of citation charging parking violation. Chapter 243 (H 298), effective June 6, 1989, amends G.S. 15A-302(d) to provide that when a citation is issued for a parking offense, a copy must be delivered to the operator of the vehicle who is present at the time of the offense or, if not present, then by delivering it to the registered owner by conspicuously affixing the copy to the vehicle.

Marine fisheries inspectors may issue warning tickets. Chapter 308 (H 667), effective October 1, 1989, adds marine fisheries inspectors to the provisions of G.S. 113-140 so that they may issue warning tickets under that statute's procedures.

Campus police changes. Chapter 518 (H 1156), effective October 1, 1989, amends G.S. 74A-2 to extend the territorial jurisdiction of company police officers of private universities and colleges to include the portion of any public road or highway passing through or immediately adjoining property already subject to their jurisdiction (for example, property owned by or in possession and control of the university or college). It also permits the university or college board of trustees to enter into joint agreements with a municipal governing board or county governing board (with the consent of the sheriff) to extend their officers' law enforcement authority into part or all of the jurisdiction of the municipality or county, respectively, and to determine the circumstances in which the extension of authority is granted.

Chapter 518 also amends G.S. 160A-288 (cooperation between law enforcement agencies) and 160A-288.2 (assistance to state law enforcement agencies) to include public university campus law enforcement agencies and private universities and colleges that employ company police officers within these statutes that authorize temporary assistance between law enforcement agencies.

Magistrate guilty plea jurisdiction. Chapter 343 (H 1283), effective October 1, 1989, amends G.S. 7A-273 to allow magistrates to accept guilty pleas for violations of G.S. 14-399 (littering) as directed by their chief district court judges. Chapter 763 (H 236), effective October 1, 1989, amends G.S. 7A-273(1) to limit a magistrate's jurisdiction in taking guilty pleas in hunting, fishing, boating, and alcohol cases to offenses listed by the chief district judges on the waiver lists. Formerly, if a hunting, fishing, or boating offense had a maximum punishment of thirty days imprisonment or a fine of not more than $50.00 and the offense was not listed on the waiver list, a magistrate could still accept a guilty plea under the magistrate's jurisdiction to accept guilty pleas in cases in which the maximum statutory punishment was a $50.00 fine or thirty days imprisonment.

Costs in criminal cases increased; no costs when case dismissed. Effective for criminal offenses and infractions committed on or after August 15, 1989, Chapter 786 (S 1177) amends G.S. 7A-304 to (1) increase criminal court costs in district court from $40.00 to $50.00 and in superior court from $65.00 to $75.00 and (2) specifically provide that no court costs may be assessed when a case is dismissed.

Pretrial release service fee. In some counties, pretrial release agencies supervise defendants who are released. Chapter 664 (S 127), effective for defendants released to a pretrial release agency on or after October 1, 1989, amends G.S. 7A-304(a) to require a convicted defendant to pay $15.00 to be remitted to the county providing pretrial release services, if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

Assistant or deputy clerk may act outside county. Chapter 445 (S 898), effective June 26, 1989, amends G.S. 7A-102(b) to permit (with the consent of the clerk of superior court of each county and the presiding judge) an assistant or deputy clerk to perform the duties and functions of the office of clerk of superior court in another county in any district or superior court proceeding that has been transferred there from the assistant or deputy clerk's county.

Timing of appeal from motion for appropriate relief. Chapter 377 (S 799), effective for all judgments entered on or after July 1, 1989, amends G.S. 15A-1448(a)(2) to provide that when a motion for appropriate relief is made under G.S. 15A-1414 (defendant's motion must be made not more than ten days after entry of judgment) or G.S. 15A-1416(a) (state's motion must be made not more than ten days after entry of judgment), the time for appealing that motion begins to run on the entry of an order on the motion by the court. [G.S. 15A-1420(c)(7) states that the court must rule on the motion, enter an order accordingly, and make certain findings.]

Juvenile records expungement when juvenile not adjudicated delinquent or undisciplined. Chapter 186 (H 338), effective July 1, 1989, amends G.S. 7A-676 to authorize the expungement of all juvenile

court and law enforcement records about an alleged act when the court has dismissed a juvenile petition pertaining to that act without an adjudication that the juvenile was delinquent or undisciplined.

Juvenile secure-custody order sent by DCI message. Chapter 124 (H 249), effective October 1, 1989, amends G.S. 7A-575 to provide that a DCI (Division of Criminal Information, State Bureau of Investigation) message stating that a juvenile petition and secure-custody order concerning a juvenile is on file in a particular county is authority to detain the juvenile in secure custody until a copy of the petition and order can be forwarded to the juvenile detention facility. However, copies of the petition and order must be sent to the facility within seventy-two hours of the juvenile's initial detention.

Civil domestic violence actions without an attorney. Chapter 461 (H 1268) amends G.S. 50B-2 and 50B-4(a) to make it easier for persons to seek civil domestic violence orders in district court and to enforce those orders by contempt. Generally, persons seeking such orders have needed attorneys to assist them in their suits. Chapter 461 reiterates what has always been the law—that persons seeking domestic violence orders may proceed *pro se* (on their own without an attorney). It also adds a requirement that, by January 1, 1990, the Administrative Office of the Courts (AOC) must develop forms necessary to proceed in a civil action for a domestic violence order and to hold a person in contempt for failing to comply with such an order. The act sets out related responsibilities of clerks of superior court and requires the AOC to distribute appropriate forms to clerks' offices by the act's effective date, January 1, 1990.

All officers may enforce wildlife property damage provisions. Chapter 221 (H 327), effective June 5, 1989, amends G.S. 113-264(a) to make clear that all law enforcement officers within their jurisdictions may enforce rules set forth under the statute that prohibits the willful removal of, damage to, or destruction of property of the Wildlife Resources Commission or the Department of Environment, Health, and Natural Resources.

Confiscated weapons may go to the North Carolina Justice Academy. Chapter 216 (S 826), effective June 5, 1989, amends G.S. 14-269.1 to add the North Carolina Justice Academy to the list of agencies that may receive confiscated deadly weapons. The weapons will be for the academy's official use.

Medical examiner law changes. Chapter 353 (H 517), effective for deaths occurring on or after October 1, 1989, amends G.S. 130A-383 and -385 and repeals G.S. 15-196 to give the medical examiner jurisdiction over the body of a person who has been executed by the state. Chapter 797 (H 515), effective for deaths occurring on or after October 1, 1989, amends G.S. 130A-385 to authorize medical examiners to inspect all physical evidence and documents that may be relevant in determining the cause and manner of a death under investigation. It also permits a medical examiner to apply for an administrative search warrant under G.S. 15-27.2 (such a warrant presumably would be used when a person with a Fourth Amendment privacy interest objects to the medical examiner's investigation), but effectively limits this warrant authority to noncriminal investigations. (Of course, a search warrant under Article 11 of Chapter 15A could be issued in a criminal case.)

Civil RICO law made permanent. Chapter 489 (S 719) removes the October 1, 1989, expiration date and thereby makes permanent the civil RICO (Racketeer Influenced and Corrupt Organizations) Act contained in General Statutes Chapter 75D.

Crime Victims Legislation

Crime victim and witness treatment law changes. Chapter 596 (H 524), effective October 1, 1989, amends Article 45 of Chapter 15A (fair treatment for victims and witnesses) to include serious misdemeanors as crimes within the article's provisions (subject to the district attorney's approval). It also adds to G.S. 15A-825 (treatment due victims and witnesses) the following information that should be provided to a victim or witness, subject to available resources to do so: (1) that testimony about one's home address is not relevant in every case and that the victim or witness may request the district attorney to object to that kind of questioning; (2) that the victim or witness has the right to be present throughout the defendant's entire trial, subject to the court's sequestering witnesses; and (3) that information about plea bargaining procedures is provided before trial and that the district attorney may recommend a plea bargain to the court. Chapter 596 limits the obligation to notify a victim under G.S. 15A-825(11) and (12) (concerning proceedings about an offender's release or about an offender's escape) to only those cases when the victim makes a written request for notification. Chapter 596 also adds a provision that G.S. 15A-825 does not create a cause of action for failure to comply with its requirements.

Crime victims' compensation law changes. Chapter 322 (S 26), effective June 15, 1989, amends G.S. 15B-2(5) to include under the compensation law victims of offenses involving impaired driving, as

defined in G.S. 20-4.01(24a) (e.g., DWI, second-degree murder, involuntary manslaughter, and death by vehicle when these offenses involve impaired driving). Chapter 322 also amends G.S. 15B-4 to provide that: (1) compensation may be awarded only for economic loss, not noneconomic loss, and the liability rules applicable to the state's civil tort law must be followed in awarding compensation and (2) compensation may be awarded only for criminal conduct committed in North Carolina, except that it also may be awarded to a North Carolina resident who is a crime victim in another state that does not have a victims' compensation program.

Chapter 679 (S 147), effective July 26, 1989, amends G.S. 15B-2(2)c to limit third parties who may be awarded compensation to those who are not collateral sources and who have provided benefit to the victim or the victim's family other than in the course or scope of their employment, businesses, or professions. Chapter 679 adds a new subsection (b) to G.S. 15B-6 to authorize the Crime Victims Compensation Commission's director, with the consent of the district attorney, to request prosecutors, law enforcement officers, and state agencies to conduct investigations and provide information to assist the director and commission in deciding whether and to what extent a claimant qualifies for compensation. It also authorizes the director to require the claimant to supplement the application with medical and psychological reports. All information is subject to the same privilege against public disclosure that may be asserted by the providing source. Chapter 679 adds new G.S. 15B-8.1 to make clear that (1) various statutory privileges, like doctor-patient, do not apply to communications and records of the victim or claimant if relevant in determining a compensation claim and (2) medical information about the victim or claimant, law enforcement information and records, and juvenile records must remain confidential and are not open to public inspection.

Civil statute of limitations tolled for criminal case restitution. Chapter 535 (H 259), effective for claims arising on or after October 1, 1989, adds new G.S. 1-15.1 to toll the statute of limitations for a civil damages action against a convicted criminal defendant (arising from the offense for which the defendant was convicted and for which the defendant was ordered to pay restitution) until the defendant has completely paid the court-ordered restitution. However, the action must be brought within ten years of the last act of the defendant giving rise to the civil action.

Motor Vehicle Law

Commercial driver impaired-driving offense. Chapter 771 (691) creates a new commercial driver's license system and a new impaired-driving offense that is committed when a person operates a commercial motor vehicle: (1) while "appreciably" under the influence of an impairing substance or (2) after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. Because this new offense is not effective until September 1, 1990, and may be amended during the 1990 legislative session, it will discussed in depth in a later memorandum.

DWI offense does not include operating bicycle, horse, or lawn mower. Chapter 711 (H 1264), effective October 1, 1989, adds a new subsection (e) to G.S. 20-138.1 to exclude as a "vehicle" under the impaired-driving offense a bicycle, horse, and lawn mower.

Substance abuse assessments for impaired drivers. Chapter 691 (H 752) amends the impaired-driving statutes that require substance abuse assessments for defendants convicted of impaired driving. Under current law, there are two categories of defendants. In ten pilot counties, every defendant convicted of impaired driving who is placed on supervised or unsupervised probation must obtain an assessment. In the other ninety counties, the assessment is required only for a defendant who was convicted of second offenses, had an alcohol concentration of 0.15 or higher, or refused a chemical analysis. Under a 1987 act, the law governing the pilot counties was to become effective statewide on July 1, 1989. Chapter 691 delays that effective date to January 1, 1990. On that date, the pilot program will be extended to all counties.

Chapter 691 amends the pilot program law to allow the agency providing the assessment (or any educational or treatment services that are ordered as a result of the assessment) to require the defendant to pay any applicable fees before it certifies to the Division of Motor Vehicles (DMV) that the defendant has completed the assessment, educational program, or treatment. The effect of this rule is that the defendant will be unable to obtain a driver's license in North Carolina until completion is certified.

Chapter 691 also allows a defendant who believes that the agency is wrongfully declining to report that the defendant has completed the assessment, education program, or treatment to obtain judicial review

of that decision in the court in which the defendant was convicted. This change also applies to the version of the assessment statute effective in the ninety nonpilot counties until January 1, 1990.

Finally, Chapter 691 provides that convicted defendants who are not placed on probation (but who are given active jail sentences) must obtain an assessment as a condition of being relicensed by the DMV after the revocation for the impaired-driving conviction has expired. This amendment will become effective on January 1, 1990.

DWI license restoration fee increased. Chapter 786 (S 1177), effective for revocations made on or after August 15, 1989, amends G.S. 20-7(i1) to increase from $25.00 to $50.00 the license restoration fee for a license revoked for an impaired-driving conviction. However, an unusual provision decreases the fee to $25.00 when the total amount of fees collected during the fiscal year under the subsection exceeds $5 million.

Proof of insurance to obtain license or limited privilege. Chapter 436 (S 141), effective June 26, 1989, amends G.S. 20-7(c1) (original issuance of driver's license); G.S. 20-7(f) (renewal of driver's license when applicant must take written examination); G.S. 20-13.2(e) and 20-19(k) (restoration of driver's license that has been suspended or revoked); and G.S. 20-16.1(g) and 20-179.3(l) (limited driving privilege) to specify how proof of financial responsibility is shown when it is required to obtain a driver's license or limited driving privilege. Chapter 436 provides two methods to prove financial responsibility: (1) a written certificate (or electronically transmitted facsimile) from an insurance carrier that states the liability policy's effective and expiration dates and the date the certificate or facsimile was issued (the certificate or facsimile is valid for thirty days from its date of issuance) or (2) a binder for a policy of private-passenger motor vehicle liability insurance, if the binder or policy states the policy's effective and expiration dates.

Right turn on red clarified. Chapter 285 (H 522), effective June 12, 1989, amends G.S. 20-158(b)(2) to conform the law to a new type of traffic light now used in the state. These new devices have two rows of signals below a single red light. The row on the right controls traffic passing straight through an intersection, while the row on the left controls traffic turning left. Chapter 285 in effect prohibits right turns on red from a left turn lane.

Moped riders must wear helmets. Chapter 711 (H 1264), effective October 1, 1989, amends G.S. 20-140.4 to make it applicable to mopeds (it has applied for many years to motorcycles). Thus moped riders must wear helmets, and the number of people on a moped cannot exceed the number it was designed to carry. A violation of the statute is an infraction punishable by a $25.00 penalty, but court costs may not be assessed.

Odometer tampering made a felony. Chapter 482 (S 396), effective January 1, 1990, increases the punishment for a violation of G.S. 20-343, which prohibits resetting or altering a motor vehicle's odometer, from that of a misdemeanor to a Class J felony (maximum sentence of three years, presumptive sentence of one year).

Child Support

Child support guidelines presumptive; applicable to criminal nonsupport cases, bastardy cases, and nonsupport probation condition. Chapter 529 (S 698) rewrites G.S. 50-13.4(c1) to (1) require the Conference of Chief District Judges to prescribe uniform statewide presumptive guidelines for computing child support obligations and to develop criteria for determining when the application of the guidelines would be unjust or inappropriate; (2) require that the guidelines include a procedure for setting support obligations when there is a joint or shared custody arrangement; (3) provide that the guidelines and criteria are to become effective July 1, 1990, but that they must be reported to the General Assembly before May 1, 1990; (4) require the Conference of Chief District Judges to review the guidelines at least every four years; (5) require the conference to give the Department of Human Resources (DHR), the Administrative Office of the Courts (AOC), and the general public an opportunity to provide information relevant to the development and review of the guidelines; (6) require that the adopted or modified guidelines be provided to the DHR and the AOC, which must disseminate them to the public through IV-D offices, clerks of court, and the media; and (7) provide that until July 1, 1990, the existing advisory guidelines adopted by the conference shall operate as presumptive guidelines and the factors adopted by the conference shall operate as criteria for deviating from the amount of support determined by applying the guidelines.

The act adds to G.S. 50-13.4(c) provisions that (1) the court must determine the amount of child support payments by applying the presumptive guidelines established under G.S. 50-13.4(c1) (see preceding paragraph); (2) at a party's request, the court may modify the amount resulting from applying the guidelines if the court finds that applying the guidelines would not meet the reasonable needs of

the child; (3) if the court orders an amount other than that resulting from the guidelines, the court must make findings of fact about the criteria that justifies deviating from the guidelines and the basis for the amount ordered; and (4) whenever requested by a party, the court must hear evidence and find facts about the child's reasonable needs for support and the relative ability of each parent to pay support. The act also amends G.S. 7A-650(c) (support of juvenile), 14-322(e) (criminal nonsupport), 15A-1343(b)(4) (nonsupport as probation condition), 49-7 (nonsupport of illegitimate child), and 110-132(b) (support of child) to specify that the amount of child support payments ordered under those sections must be determined as provided in G.S. 50-13.4(c).

Before October 1, 1989, the existing child support guidelines and factors for deviating from them must be disseminated to the public by the DHR and the AOC through local IV-D offices, clerks of court, and the media. Otherwise, the act is effective October 1, 1989, and applies to child support orders entered or modified on or after that date.

Income withholding—retirement benefits. Chapter 665 (S 464) amends G.S. 128-31, 135-9, and 135-95 to subject state-administered retirement systems to income withholding for child support. The act is effective October 1, 1989, and applies to orders issued on or after that date.

Income withholding amendments. Chapter 601 (S 511) amends G.S. 110-129(10) to add to the definition of "mistake of fact" the fact that the obligor does not owe the amount of support or arrearages specified in the advance notice of or motion for withholding. It amends the income withholding procedures in G.S. 110-136.3, -136.4, and -136.5 to (1) provide in IV-D cases for income withholding to become effective immediately upon entry or modification of a child support order or at the request of the obligee, except that immediate withholding does not apply if insufficient information is available, the obligor is unemployed, or the parties agree to an alternative arrangement; (2) provide in non-IV-D cases for income withholding to become effective upon the court's finding, pursuant to a motion or independent action filed by the obligee, that the obligor is or has been delinquent or erratic in making child support payments; (3) require that the custodial party (previously, the obligee or custodial party) keep the obligor informed of the child's residence and mailing address, but adds an exception to that requirement if the court determines that to do so is inappropriate because the obligor has made threats that constitute domestic violence under G.S. Chapter 50B; (4) provide that when an order for withholding is entered in a non-IV-D case, the notice of obligation to withhold must be served on the payor as required by G.S. 1A-1, Rule 4 (previously, by certified mail), and served on the obligor by first-class mail (previously, by certified mail). The act is effective October 1, 1989, and applies to orders issued on or after that date.

Repeal IV-D cost recovery. Chapter 490 (S 777), effective June 28, 1989, rewrites G.S. 110-130.1 (IV-D services to non-AFDC recipients) to (1) provide for a $10.00 application fee in all such cases (previously, the fee was $5.00 or $25.00, depending on the applicant's income) and (2) repeal all provisions for the recovery of costs by IV-D agencies (previously, cost recovery occurred if the client's income was more than 200 percent of the federal poverty level).

Involuntary Commitments and Forensic Evaluation

Definition of dangerousness expanded. Chapter 486 (S 517), effective June 28, 1989, amends G.S. 122C-3(11) to change the definition of dangerousness for involuntary commitments. The new law replaces the requirement that the conduct constituting dangerousness to self or others must have occurred within the "recent" past with language that the conduct must have occurred within the "relevant" past. The length of time between the dangerous conduct and the involuntary commitment proceeding is no longer the controlling factor in determining whether dangerousness exists. Although a judicial official may consider recency, the determination is now guided by relevancy and not limited to temporal conditions. In making the change the General Assembly wanted to cure two problems: (1) the practice of some judicial officials and physicians of setting a specific time limit for the conduct, for example, requiring the dangerous conduct to have occurred within twenty-four hours of the issuance of the custody order; and (2) proving that the respondent is dangerous after he or she has been confined in a facility for a period of time.

The specific situation that led to the introduction of the bill was a case in which a defendant had been found incapable of proceeding in a murder case. The finding of incapacity was made over a year after the alleged murder, and the only evidence offered at the hearing as to whether a custody order should be issued to begin an involuntary commitment was that the respondent had not exhibited dangerous conduct since being confined. The new law would allow the judge to consider whether the

alleged murder occurred within the relevant rather than recent past. Also, the new law specifically provides that clear, cogent, and convincing evidence that an individual committed a homicide in the relevant past is *prima facie* evidence of dangerousness to others.

Local initial evaluation of capacity to proceed necessary when a misdemeanor is charged. Chapter 486 (S 517), effective October 1, 1989, amends G.S. 15A-1002 to require that a local forensic evaluation must be made before a state evaluation of a defendant charged with a misdemeanor, and whose capacity to proceed to trial has been questioned, may be ordered.

Definition of mentally ill minor. Chapter 223 (H 526), effective June 5, 1989, amends G.S. 122C-3(21) to rewrite the definition of a mentally ill minor for purposes of voluntary admission and involuntary commitment to facilities for mental illness or substance abuse. In *In re* Lynette H., 90 N.C. App. 373, 368 S.E.2d 452, *reversed*, 323 N.C. 598, 374 S.E.2d 272 (1988), the court of appeals ruled that the definition of mental illness when applied to a minor was unconstitutionally vague because it was susceptible to different interpretations and arbitrary applications, it contained excessive use of the conjunction "or," and it failed to prescribe an ascertainable standard to enable judges to interpret the law and apply it uniformly. The North Carolina Supreme Court reversed the decision on a jurisdictional ground without reaching the issue of whether the definition was unconstitutionally vague. Without waiting for the matter to be relitigated, the General Assembly amended the definition of mental illness for a minor to correct the deficiencies specified by the court of appeals. The new definition deletes many of the conjunctive phrases but will probably not make a difference in the minors for whom professionals recommend treatment. However, one issue that might arise under the new definition is whether a minor whose behavior is normally acceptable only for persons of an older age will still fall under the definition of mental illness. The new law deletes a provision that mental illness could be shown by failure to exercise "age appropriate" as well as "age adequate" self-control. It could be argued that only the failure to exercise self-control up to the minimally adequate level is covered.

Outpatient commitment. Chapter 225 (H 600), effective for commitment orders issued on or after October 1, 1989, amends G.S. 122C-271(b)(1) and 122C-263(d)(1) to make a slight change in the criteria for outpatient commitment of a mentally ill person. Chapter 225 requires that a respondent's need for treatment to prevent deterioration that would result in dangerousness must be based on the respondent's prior psychiatric history, rather than his or her prior treatment history.

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