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Administration of Justice Memorandum

1992 Legislation Affecting Criminal Law and Procedure

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This memorandum summarizes acts of the 1992 session of the North Carolina General Assembly that affect criminal law and procedure. Each new law is referred to by the session laws chapter number of the ratified act and by the number of the original bill that became law—for example, Chapter 804 (H 217). 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, 16 West Jones Street, Raleigh, NC 27601, or by calling that office at 919-733-5648. Your request should be by bill number rather than by chapter number.

Some of the material in this memorandum is excerpted from chapters by Institute of Government faculty members in a forthcoming publication, *North Carolina Legislation 1992*, which may be ordered from the Institute of Government's Publications Office at 919-966-4119.

Criminal Law Changes

New stalking offense added. Chapter 804 (H 217), effective for offenses committed on or after October 1, 1992, added new G.S. 14-277.3 to create a new offense of stalking. This act was apparently intended to provide a criminal charge for conduct that may not violate other criminal statutes, such as assault, communication of threats, and trespass. Of course, when a person's conduct violates the stalking law as well as other laws, all violations may be charged.

The offense of stalking is committed when a person willfully, on more than one occasion, follows another person or is in that person's presence without legal purpose and (1) there is intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury, (2) the person has received reasonable warning or a request to desist by or on behalf of the other person, and (3) the acts constitute a pattern of conduct over time that shows a continuity of purpose. This offense is a misdemeanor punishable by a maximum imprisonment of six months and a maximum $1,000 fine. A person who commits this offense when a court order prohibits "similar behavior" is punished by a maximum imprisonment of two years and a maximum $2,000 fine. A second or subsequent conviction for stalking that occurs within five years of a prior conviction is punishable as a Class I felony (maximum imprisonment of five years and a fine).

New felony when person fortifies structure to prevent law-enforcement entry added. G.S. 90-108(a)(7) prohibits a person from knowingly keeping a house, building, vehicle, boat, or other place where (1) illegal drugs are kept or sold or (2) people illegally use drugs. A person who *intentionally* violates this law is guilty of a Class I felony (maximum imprisonment of five years and a fine). A person who violates the law, but not intentionally (which appears difficult

to do, considering this particular violation), is guilty of a misdemeanor punishable by a maximum imprisonment of two years and a fine. Chapter 1041 (H 508), effective for offenses committed on or after October 1, 1992, amended G.S. 90-108 to provide that a person who violates G.S. 90-108(a)(7) and also fortifies a structure by barricading windows and doors with the intent to impede law-enforcement entry is guilty of a Class I felony.

Punishment increased for local prisoners who escape while working. Chapter 841 (S 1073), effective July 6, 1992, authorized counties to use prisoners who are serving sentences in local confinement facilities or satellite jail/work release units to work on projects that benefit state or local governments. Working prisoners who faithfully perform their duties are eligible for a reduction in their sentences of four days for each thirty days of work performed. Chapter 841 also amended G.S. 14-255 to increase the punishment for a working prisoner who escapes while on work detail to a maximum imprisonment of two years and a fine. The punishment previously was a maximum imprisonment of thirty days or a maximum $50.00 fine.

Law clarified that certain juveniles charged with first-degree murder must be tried as adults. G.S. 7A-608 provided that when a juvenile fourteen years old or older was charged with a "capital offense" (the only offense punishable by death is first-degree murder) and the district court judge found probable cause to support that charge, the judge was required to transfer the case to superior court, where the juvenile would be tried as an adult. Since this statute was originally enacted, the legislature has eliminated the death penalty (with limited exceptions) as a punishment for first-degree murder for those under seventeen years old. Thus there is no "capital offense" for juveniles. Chapter 842 (H 1117), effective for offenses committed on or after October 1, 1992, corrected this problem by substituting "Class A felony" for "capital offense" in G.S. 7A-608. The only Class A felony is first-degree murder, which is punishable by death or life imprisonment. Thus a juvenile fourteen or fifteen years old who is charged with first-degree murder must now be tried as an adult if a district court judge finds probable cause to support the charge.

Speeding violations changed. Chapter 1034 (H 379), effective for offenses committed on or after October 1, 1992, amended G.S. 20-141(j1) to increase from $100 to $200 the maximum fine for speeding more than fifteen miles per hour over the speed limit. Chapter 818 (H 515), effective for violations committed on or after October 1, 1992, added a new G.S. 20-141(j2) to create an infraction, subject to a penalty of $100, when a person drives a motor vehicle in a highway work zone at greater than the posted speed. A highway work zone is the area between the first sign that informs a motorist of the work zone and the last sign indicating the end of the work zone. This law is applicable only if a sign is posted at the beginning of the work zone that states the penalty for speeding in the work zone.

Criminal Procedure and Miscellaneous Matters

Criminal court costs increased. Effective July 1, 1992, Chapter 811 (H 945) increased criminal court costs by $5.00: to $60.00 in district court and to $80.00 in superior court.

Procedure for involuntary commitment of insanity acquittees changed. In 1991 the General Assembly enacted a new procedure for involuntarily committing criminal defendants who are found not guilty by reason of insanity. That procedure automatically committed a criminal defendant for up to fifty days, followed by a hearing and then rehearings at which the respondent (respondent is the name used in such commitment hearings) had the burden of proving that he or she was no longer dangerous to others. If the respondent successfully proved that fact, then the respondent also had to prove—to be free from further commitment—that he or she did not have a mental illness or that confinement was not necessary to alleviate or cure his or her illness. Recently, however, the United States Supreme Court, in Foucha v. Louisiana, 112 S. Ct. 1780, 118 L.Ed.2d 437 (1992), ruled unconstitutional a Louisiana statute that allowed an insanity acquittee to remain committed to a mental institution until the acquittee proved that he or she was not dangerous to himself or herself or others, even though the acquittee did not suffer from any mental illness. The Court ruled that a person may not be held, even as an insanity acquittee, on evidence of dangerousness alone. Evidence of dangerousness and mental illness are both necessary for continued commitment. Chapter 1034 (H 379), effective for all hearings and rehearings on or after July 24, 1992, amended G.S. 122C-268.1 and -276.1 to comply with the *Foucha* ruling. It continued the automatic commitment of a criminal defendant for up to fifty days after a verdict of not guilty by reason of insanity. At the hearing after this initial commitment and at all rehearings, the respondent now only must prove—to be free from further commitment—that he or she no longer is mentally ill *or* no longer is dangerous to others. The judge must make a written record of the facts that support the judge's ruling. (What if the respondent is mentally ill and dangerous to himself or herself, but not to others? The respondent must be released from the commitment as an insanity acquittee, but proceedings could be instituted to commit him or her under regular civil commitment procedures.)

Chapter 1034 also amended G.S. 122C-268.1 to make clear that the district attorney who prosecuted the insanity

acquittee may represent the state's interest at all commitment hearings and rehearings.

Guilty pleas under waiver list expanded. In 1991 the General Assembly amended G.S. 7A-148 to authorize the Conference of Chief District Court Judges (hereafter, conference) to adopt a uniform schedule of state park and recreation area rule offenses under Chapter 113 and littering offenses under G.S. 14-399(c)—for which magistrates and clerks may accept waivers of trial and pleas of guilty (commonly known as waiver lists). However, the General Assembly did not amend G.S. 7A-273 and -180, which authorize magistrates and clerks to take such guilty pleas. The conference chose, as a matter of caution, not to issue waiver lists for the new offenses until the General Assembly granted magistrates and clerks the authority to take those guilty pleas; Chapter 900 (H 1340) included such a provision. However, in providing for littering to be handled by a uniform waiver list, Chapter 900 deleted the authority of magistrates and clerks to take guilty pleas in simple littering cases and to enter judgment concerning punishment as their individual chief district court judge directs. Therefore magistrates and clerks may only take guilty pleas in simple littering cases and impose the punishment set by the conference in a uniform waiver list.

Payment for drug testing required of probationers and parolees. Chapter 1000 (S 885), effective July 1, 1992, amended G.S. 15A-1343(b1)(7) and G.S. 15A-1374(b)(11) (which permit warrantless searches of probationers and parolees under certain conditions) to provide that if the search involves testing for the presence of illegal drugs, the sentencing judge or Parole Commission may require the probationer or parolee to reimburse the Department of Correction for the drug screening and testing, if the results are positive. [See Shore v. Edmisten, 290 N.C. 628, 227 S.E.2d 553 (1976), in considering this provision's constitutionality.]

Transfer of safekeepers to state prison limited. Chapter 983 (S 1105), effective July 20, 1992, amended G.S. 162-39 to specify that the authority of judges to order the transfer of prisoners (commonly know as safekeepers) from county jails to the state prison system is limited to overcrowding situations and when the prisoner (1) poses a serious escape risk, (2) needs a higher level of supervision because of uncontrollable violent behavior, (3) needs protection from other inmates that the jail cannot provide, (4) is a female or a minor (under eighteen) and the county jail does not have adequate housing for the prisoner, (5) is in custody when a fire or other catastrophic event curtails the jail's operations, or (6) otherwise is an imminent danger to the jail staff or other prisoners. In addition, a judge may order a prisoner in a county jail transferred to state prison if the county decides that the prisoner needs medical or mental health treatment that can best be provided in prison.

Chapter 983 also contains specific provisions about the county's reimbursement to the Department of Correction for the department's costs of providing extraordinary medical care (as defined in the law) to safekeepers.

Reporting procedures of sexual abuse in child day-care facility or home changed. Chapter 923 (H 1375) made several changes concerning sexual abuse in child day care. It added to G.S. 7A-543 a requirement that a county social services director (hereafter, director) who receives a report of child sexual abuse in a day-care facility or home must notify the State Bureau of Investigation (SBI) within twenty-four hours or during the next work day. The director must notify the SBI immediately if there is reason to suspect child sexual abuse and sexual abuse was not alleged in the initial report of abuse or neglect. The SBI, when notified that child sexual abuse may have occurred in a day-care facility or day-care home, may form a task force to investigate the report.

Chapter 923 also amended G.S. 7A-548 to (1) require a director who finds evidence that a juvenile has been abused or neglected in a day-care facility or home to notify the SBI only when the case involves child sexual abuse, (2) require the director to provide written notification to the Department of Human Resources of the results of an investigation of child abuse or neglect, and (3) require the director to provide written notification to the SBI of the results of an investigation of child sexual abuse.

Chapter 923 applies to investigations of allegations received by directors on and after August 1, 1992.

Interim attorneys' fees allowed in extraordinary cases. Chapter 900 (H 1340), effective July 1, 1992, amended G.S. 7A-458 to allow a presiding judge, in a capital or other extraordinary superior court case, to award interim attorneys' fees to attorneys representing indigent defendants, pending a final determination of the case.

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