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Administration of Justice Memorandum

Judges, Superior Court Clerks, Prosecutors, Appellate and Public Defenders, Magistrates, Police Attorneys, Law Enforcement, Probation and Parole Officers, Subscribers

1994 Regular Session Legislation Affecting Criminal Law and Procedure

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This *Administration of Justice Memorandum* discusses acts of the 1994 regular session of the North Carolina General Assembly that affect criminal law and procedure. This session was held from May 23, 1994 to July 17, 1994. [A previous *Administration of Justice Memorandum* (No. 94/03 April 1994) by Thomas H. Thornburg discussed criminal law and procedure from the extra session that was held from February 8, 1994 to March 26, 1994.] Each ratified act is referred to by its chapter number in the session laws and by the number of the original bill that became law—for example, Chapter 673 (S 945). The effective date of each new law is also given. If the act specified the codification of a new section of the General Statutes (G.S.), the section number stated in the act is given, though the reader should be aware that the codifier of statutes may change that number.

The statutory changes are not reproduced here. Anyone may obtain a free copy of any bill by writing the Printed Bills Office; State Legislative Building; 16 West Jones Street, Raleigh, NC 27601-1096 or by calling that office at (919) 733-5648. A request should specify the new law's bill number rather than the chapter number.

Some of the material in this *Memorandum* was excerpted from chapters by Institute of Government faculty members in a forthcoming publication *North Carolina Legislation 1994*, which may be ordered from the Institute of Government publications office at (919) 966-4119 or 966-4120.

Criminal Law Changes

New statute describes when deadly force may be used against an intruder into a home or other place of residence. Chapter 673 (S 945), effective for offenses committed on or after October 1, 1994, adds a new statute (G.S. 14-51.1) that describes when deadly force may be used against an intruder into a home or other place of residence (for example, a motel room). It provides that a lawful occupant may use any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or other place of residence or "to terminate the intruder's unlawful entry" (i) if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence, or (ii) if the occupant reasonably believes that the intruder intends to commit a felony in the home or residence. G.S. 14-51.1 also provides that the occupant has no duty to retreat from the intruder under the preceding circumstances. This new statute essentially codifies current common law rules, except that the quoted language may expand the use of deadly force beyond the common law. It may permit deadly force against an intruder who has already entered the home and is about to commit a felony that may not present a danger of death or serious bodily injury to the occupant. For example, if an occupant reasonably believes an intruder may be

about to commit larceny and the occupant reasonably believes that deadly force is necessary to stop the intruder from committing the larceny, the statute appears to permit the occupant to use deadly force.

Company police and campus police officers are added to aggravated assault statutes. When the Structured Sentencing Act becomes effective for offenses beginning on or after October 1, 1994, G.S. 14-33(b) makes an assault on a government officer or employee while discharging a duty of office a Class 1 misdemeanor and G.S. 14-34.2 makes such an assault with a deadly weapon or firearm a Class F felony. Chapter 687 (H 1049), effective for offenses committed on or after October 1, 1994, adds to these statutes company police officers (generally, officers of private companies certified as law enforcement officers under Chapter 74E of the General Statutes) and public and private university campus police (certified as law enforcement officers under Chapter 17C or Chapter 116 of the General Statutes).

Changes are made to computer-related offenses. Chapter 764 (H 822), effective for offenses committed on or after December 1, 1994, makes several changes to computer-related offenses in Article 60 of Chapter 14 of the General Statutes. It provides definitions for the following terms used in the article: "authorization," "data," and "resource." Also, the punishment in G.S. 14-454(a) for unlawfully accessing computers by fraudulent means—currently a Class H felony for all violations—is made a Class G felony if the fraud results in more than $1,000 in damages or if property or services obtained are worth more than $1,000. Any other violation of G.S. 14-454(a) is made a Class 1 misdemeanor. The crime set out in subsection (b) of G.S. 14-455 is repealed and the punishment in G.S. 14-455(a) for altering, damaging, or destroying a computer, computer system or network, or any part thereof—currently a Class H felony for all violations—is made a Class G felony if the damages are more than $1,000. Any other violation of G.S. 14-455(a) is made a Class 1 misdemeanor. The crime set out in G.S. 14-456 is revised so it now provides that a person who willfully and without authorization denies or causes the denial of computer, computer system, or computer network services to an authorized user is guilty of "a misdemeanor" [by virtue of G.S. 14-3(a), the quoted language will mean a Class 1 misdemeanor].

Chapter 764 also amends G.S. 14-454, 14-455, and 14-456 to include within the prohibited acts of these statutes those acts caused by the introduction, directly or indirectly, of a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network.

Statutes concerning minors and handguns are amended. Chapter 597 (H 1770), effective for offenses committed on or after January 1, 1995, amends two statutes concerning minors and handguns. The definition of handgun in G.S. 14-269.7(c)(1) (the statute prohibits a minor from possessing a handgun) is amended so it also includes any combination of parts from which a handgun can be assembled. G.S. 14-315 is amended to increase from a misdemeanor to a Class I felony the punishment for the sale or transfer of a handgun to a minor. Chapter 597 also adds exceptions to this offense—for example, it is not a violation when the handgun is lent to a minor for temporary use if the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 (unlawfully permitting child under 12 to use dangerous firearms) and is not otherwise unlawful.

Structured Sentencing Act Changes

The following provisions are applicable to the Structured Sentencing Act, effective for offenses committed on or after October 1, 1994. (The term "SSA" will be used for the Structured Sentencing Act hereafter.)

Limitation on probation is clarified. Chapter 767 (S 1630) amends G.S. 15A-1342(a), -1351(a), and -1343.2(d) to make clear that under the SSA, as under previous law, the period of probation (i.e., the period of time during which the offender is subject to a suspended sentence) is limited to five years. [Remember, of course, that a court under the SSA may not exceed the probation period lengths set out in G.S. 15A-1343.2(d)(1) - (4) without making specific findings.] G.S. 15A-1342(a) and -1343.2(d) provide one exception to the five-year limit: the originally-imposed period of probation may be extended with the offender's consent for up to three years—which may extend beyond the five-year limit—to complete restitution payments or to complete treatment ordered as a condition of probation.

(This extension was authorized before the SSA took effect.)

Period of special probation for IMPACT program is modified. Under the SSA, the period of imprisonment imposed as a condition of special probation (sometimes called a "split sentence") is limited to six months or one-fourth the maximum term of the suspended sentence imposed for the offense, whichever is less. One exception to this rule concerns impaired driving, which has its own sentencing scheme (see G.S. 20-179). Chapter 767 (S 1630) adds another exception: When the probationer is sentenced to the IMPACT program while imprisoned as a condition of special probation, this period of imprisonment is limited to six months or *one-half* the maximum term of the suspended sentence, whichever is less. The IMPACT program, often called "boot camp," is a motivational program involving military-style discipline. Like other special probation imprisonment, the imprisonment for the IMPACT program must be credited against the probationer's suspended sentence if probation is revoked and the suspended sentence is activated.

Communicable disease control violations are exempt from Structured Sentencing Act procedures. Sentencing for impaired driving is exempt from the SSA's sentencing procedures. Chapter 767 (S 1630) also exempts criminal violations of communicable disease control requirements under G.S. 130A-25(b).

Felony sentencing provision on counting multiple prior convictions is revised. In determining prior record level in sentencing for a *felony* under the SSA when the defendant has more than one prior conviction, Chapter 767 (S 1630) revises G.S. 15A-1340.14(d) to provide: (1) if the defendant had received multiple prior convictions in *superior* court during a single calendar week, only the conviction for the offense with the highest point total is to be used; and (2) if the defendant had multiple convictions in *district* court during a single session (each day is a separate session), only one of the convictions is to be used. (Originally, the single-calendar-week provision had applied to both superior and district court.) The result of this change is that if the defendant has prior convictions in district court each of which occurred in the same week but on different days, all may now be used to determine the defendant's prior record level.

Felony sentencing provision on prior convictions from other jurisdictions is revised. Chapter 767 (S 1630) amends G.S. 15A-1340.14(e) to provide that if an offense resulting in a prior conviction in another jurisdiction is classified as a misdemeanor in that jurisdiction, that offense will be classified as a Class 3 misdemeanor in felony sentencing under the SSA. If the defendant proves by a preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to a misdemeanor in North Carolina, that offense is to be treated as a misdemeanor of the particular class to which it belongs in North Carolina. If the state proves by a preponderance of the evidence that an offense classified as a misdemeanor or felony in the other jurisdiction is substantially similar to a Class I or higher felony classification in North Carolina, the offense is treated as a felony of that class. If the state proves by a preponderance that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to a Class 1 misdemeanor in North Carolina, that offense is to be treated as a Class 1 misdemeanor.

Provision for continuance of SSA sentencing hearing is revised. Chapter 767 (S 1630) amends G.S. 15A-1340.14(f) and -1340.21(c) to provide that when a motion is made to suppress a prior conviction under G.S. 15A-980 (violation of the right to counsel) in a SSA felony or misdemeanor sentencing hearing, the trial judge "may" grant a continuance of the hearing. The prior version stated that both the state and defendant were "entitled to" a continuance.

Eligibility for community penalties program is revised. Community penalties programs prepare community penalty (sentencing) plans for submission to a sentencing judge, after an investigation of the defendant's suitability for sentencing other than prison and the availability of needed services or treatment. G.S. 7A-771 and -773 require that these programs "target" (serve) offenders "who are facing an imminent and substantial threat of imprisonment" and are charged with certain offenses. Chapter 767 (S 1630) amends these statutes to change the definition of "targeted offenders" to those "who are eligible to receive an intermediate punishment based on their class of offense and prior record level" as well as "facing an imminent and substantial threat of imprisonment." Thus, to be targeted for the programs'

services, offenders must not only be eligible to be sentenced to an intermediate punishment, but also—because they must face an imminent threat of imprisonment—must be eligible for an active sentence as well. Under the SSA, offenders eligible for both intermediate and active punishment include: (1) those convicted of any misdemeanor who are in Prior Conviction Level III (five or more prior convictions); (2) those convicted of a Class 1 misdemeanor who are in Prior Conviction Level II (one to four prior convictions); and (3) those convicted of felonies in the following classes and Prior Record Levels indicated in parentheses: Class E (Level I or II); Class F (Levels I-III); Class G (Levels I-IV); Class H (Levels III-V); and Class I (Levels IV-VI).

Jail sentences: credit for assigned work is clarified. Chapter 767 (S 1630) amends G.S. 15A-1340.20(d), 162-60, and 153A-230.3(b)(5) to provide that under the SSA, the work credit that a jailer may give a sentenced misdemeanant, *combined with* the earned time the misdemeanant may receive under rules issued by the Department of Correction, may not exceed more than four days credit per month of incarceration. The amendments mean that the limit on total credit will be the same regardless of whether the misdemeanant is sentenced to state prison or local jail.

Sentencing of habitual felon is clarified. Under G.S. 14-7.6, a defendant who is convicted of a felony and is determined at a hearing after that conviction to be an habitual felon (essentially, a defendant with three prior felony convictions occurring in a prescribed time period) must be sentenced as a Class C felon. Chapter 767 (S 1630) amends the statute to make clear that a defendant who has been convicted of a more serious felony (Class A, B1, or B2) and determined to be an habitual felon will be sentenced under the punishment provisions for the more serious felony classification. (Of course, a prosecutor would not proceed with a hearing on habitual felon status after the person was convicted of a Class A, B1, or B2 felony, since the prescribed punishment for habitual felon is Class C.)

Driving while license permanently revoked and certain other offenses are repealed. Effective for offenses committed on or after October 1, 1994, Chapter 761 (S 1579) repeals G.S. 20-28(b), the offense of driving while license has been permanently revoked (a savings clause permits continued prosecution of offenses committed before that date). A person who drives while his or her license has been permanently revoked will be charged under G.S. 20-28(a), driving while license has been revoked, which is punishable as a Class 1 misdemeanor. Chapter 767 (S 1630) repeals two felony statutes: G.S. 14-20 (killing an adversary in a duel) and G.S. 14-43 (abduction of married woman). It also repeals a variety of rarely-charged misdemeanors—for example, G.S. 14-310 (dance marathons and walkathons prohibited) and G.S. 14-396 (dogs on "Capitol Square" worrying squirrels). All these statutes are repealed effective for offenses committed on or after October 1, 1994 (a savings clause permits continued prosecution of offenses committed before that date).

Note about error in Michie Company statutes. The Michie Company compilation of the General Statutes contains an error in G.S. 15A-1340.17, a key felony sentencing provision of the SSA. In the Prior Record Level chart, the authorized disposition for Class F, Prior Record Level III should be "I/A," not "A."

Motor Vehicle Law Changes

Punishment is increased for habitual impaired driving; new forfeiture provisions are added. Chapter 767 (S 1630), effective for offenses committed on or after October 1, 1994, increases the punishment for habitual impaired driving (G.S. 20-138.5) from a Class I to a Class G felony. Chapter 761 (S 1579), effective for offenses committed on or after October 1, 1994, provides that if a defendant is convicted of habitual impaired driving, the motor vehicle driven by the defendant at the time of the offense is property subject to forfeiture according to the procedure set out in G.S. 20-28.2 (forfeiture of motor vehicle for impaired driving after impaired driving license revocation). In applying that procedure, an owner or holder of a security interest is considered an innocent party in relation to the motor vehicle subject to forfeiture if (1) the owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the prior seven years of three or more offenses involving impaired driving, or (2) the defendant drove the motor vehicle without the consent of the owner or holder of the security interest.

Child restraint law is strengthened. Chapter 748 (S 1467), effective July 1, 1995 (carefully note the year) amends G.S. 20-137.1 to require that children under 12 years of age must be properly secured in a child passenger restraint system that meets federal standards. For children under four this means a car safety seat, but for those between four and 12 years of age the seat safety belt is sufficient. Under current law only children under three must be in a car safety seat, and the statute does not apply to any child who has reached his or her sixth birthday. Any driver transporting a child under 12 in violation of this law may be fined up to $25, but no driver license points or insurance points are assessed for a violation.

Children under 12 are not permitted in vehicle's open bed or cargo area, with exceptions. Chapter 672 (H 27), effective January 1, 1995, adds a new G.S. 20-135.2B to prohibit children under 12 years of age from being transported in the open bed or open cargo area of any vehicle. This law does not apply if: (1) an adult is present in the bed or cargo area and is supervising the child; (2) the child is secured or restrained by a seat belt meeting federal standards and approved by the Commissioner of Motor Vehicles; (3) an emergency situation exists; (4) the vehicle is being operated in a parade pursuant to a valid permit; (5) the vehicle is being operated in an agricultural enterprise; or (6) the vehicle is being operated in a county which has no incorporated area with a population in excess of 3,500 (this exemption may apply to over a third of North Carolina's counties). The driver of any vehicle transporting children in violation of this section is guilty of an infraction with a $25 penalty; but no court costs, driver license points, or insurance points may be assessed.

Driver's license law changes. Chapter 750 (S 1566), effective January 1, 1995, amends G.S. 20-7 to make several changes in driver's license law. First, wording was added to subsection (a) to provide that the driver of a motor vehicle "must carry the license while driving the vehicle." (This has been the law for decades, but until now it has not been clearly spelled out.) Chapter 750 also amends 20-7(b1) to require the applicant for a driver's license furnish his or her social security number. (Several states already use a person's social security number for the driver's license number and this act authorizes North Carolina to do the same.) The Division of Motor Vehicles may disclose a social security number only to administer the license law and may not disclose it for any other purpose. The amendment to subsection (b1) specifically states that a social security number obtained for license purposes is *not* a public record.

G.S. 20-7(n), which specifies the format for a license, was amended to provide that the driver's race must be included on the license if licensee so requests. (A provision allowing the licensee to decline to have his or her picture included for religious reasons was retained.) Chapter 750 also amends G.S. 20-52 to provide that the applicant for vehicle title, registration plate, or registration card must also furnish his or her social security number, which would be subject to the same protections noted above.

Chapter 595 (H 1551), effective July 1, 1994, amends G.S. 20-7(f) and 20-7(c1) to delete the requirement that a person applying for renewal of a driver's license who must take a written examination is required to furnish proof of financial responsibility (liability insurance). The requirement that a first-time driver license applicant show that he or she has liability insurance was retained.

State emergency management vehicles may have red lights and sirens. Chapter 719 (S 1072), effective July 7, 1994, amended G.S. 20-130.1(b) to allow state management emergency vehicles to be equipped with red lights and sirens.

Miscellaneous

Additional conditions are authorized for pretrial release of defendants charged with sex offenses and crimes of violence against child victims. Chapter 723 (H 358), effective July 7, 1994, adds new G.S. 15A-534.4 to authorize a judicial official—in setting the pretrial release conditions of defendants charged with certain sex offenses and crimes of violence against child victims (described below)—to impose the following additional conditions: (1) the defendant must stay away from the home, temporary residence, school, business, or place of employment of the alleged victim; (2) the defendant must refrain from communicating or attempting to communicate with the alleged victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges; and (3) the defendant must refrain from assaulting, beating,

intimidating, stalking, threatening, or harming the alleged victim. The specific offenses included within this statute are felonious or misdemeanor child abuse; indecent liberties; rape and other sex offenses against a minor contained in Article 7A of Chapter 14 of the General Statutes; incest with a minor under G.S. 14-178; kidnapping, abduction, and felonious restraint of a minor victim; a violation of G.S. 14-320.1 (transporting child outside state with intent to violate custody order); and assault, other crimes of violence, or communicating threats against a minor.

INS officers are added to statute permitting federal officers to enforce state crimes. In 1991 the General Assembly enacted G.S. 15A-406, which authorizes specified federal law enforcement officers to enforce North Carolina criminal laws if the federal officer (1) is asked by the head of a state or local law enforcement agency, or his or her designee, to provide temporary assistance, and the request is within that agency's territorial and subject matter jurisdiction, or (2) is asked by a state or local law enforcement officer to provide temporary assistance when the officer is acting within the officer's territorial and subject matter jurisdiction. Chapter 571 (S 508), effective June 23, 1994, adds Immigration and Naturalization Service officers to the list of federal officers who may enforce North Carolina criminal laws under this statute.

Department of Correction pays for jail confinement when there is criminal contempt punishment for probation violation. Effective July 1, 1994, Chapter 769 (S 1505) provides that if a court imposes a jail sentence as a punishment for criminal contempt for a probation violation under G.S. 15A-1344(e1), the Department of Correction must pay for the jail confinement at the standard rate set by the General Assembly pursuant to G.S. 148-32.

Child protection initiatives are encouraged. Chapter 723 (H 358), effective July 7, 1994, encourages, but does not require, a number of child protection initiatives. The act directs the Administrative Office of the Courts to encourage district attorneys to develop and disseminate information about "child friendly" courtrooms, preparation of child witnesses, and the use of videotaped and closed circuit testimony. The North Carolina Conference of District Attorneys is encouraged to establish a special section for child abuse prosecutors if it determines that there is sufficient interest in such a section. The North Carolina Conference of District Attorneys and the North Carolina Department of Justice are encouraged to develop protocols and training (1) for law enforcement agencies, relating to conducting child abuse investigations; (2) for district attorneys, relating to criminal prosecution of child abuse and neglect; and (3) for local multidisciplinary child abuse and neglect criminal investigation teams, relating to operating policies and information sharing. The Department of Justice and the AOC are encouraged to develop job descriptions and working procedures for law enforcement officers specializing in child abuse criminal investigations and for assistant district attorneys who handle all child abuse and neglect cases.

Sentencing Commission is extended. Effective July 1, 1994, chapter 591 (H 1605) extends the life of the Sentencing and Policy Advisory Commission (commonly known as the Sentencing Commission) until July 1, 1995. It also amends G.S. 164-38 to extend the terms of current commission members until June 30, 1995.

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