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1996 Legislation Affecting Criminal Law and Procedure

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This *Administration of Justice Bulletin* discusses legislation relating to criminal law and procedure enacted in 1996 by the North Carolina General Assembly during its regular session and second extra session. The General Assembly did not enact any criminal law and procedure legislation during its first extra session in 1996.

In the 1996 regular session, all of the legislation on criminal law and procedure was enacted during the last two days of the session. (This late flurry in criminal law and procedure was part of a larger end-of-session rush: Of the 211 bills enacted during the regular session, 193 were enacted during the last three days, 156 on the last day alone.) Important changes came in some areas, particularly in state postconviction procedure.

In the second extra session, the General Assembly turned its attention to the budget for the 1996-97 fiscal year. The General Assembly continued to make substantive changes in criminal law and procedure, however, using the budget bill as the vehicle for all of the changes.

Each ratified act discussed here is identified by its chapter number in the session laws and by the number of the original bill—for example, Ch. 719 (H 9). Unless otherwise noted, all references are to legislation enacted during the 1996 regular session. When an act creates new sections in the General Statutes (G.S.), the section number is given; however, the codifier of statutes may change that number later.

The statutes themselves 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. Requests should identify the new law's bill number, not the chapter number.

Some of the materials in this *Bulletin* were drawn from chapters in the forthcoming publication *North Carolina Legislation 1996*, written by members of the Institute of Government faculty. That publication, as well as other bulletins on recent legislation, may be ordered from the Institute's publications office at (919) 966-4119 or 966-4120.

Postconviction Proceedings

Chapter 719 (H 9) makes significant changes to the rules governing postconviction proceedings in state court. These changes affect both capital and noncapital cases, treating matters as far ranging as the amount of time for filing of a motion for postconviction relief to the procedure the prison warden must follow in setting the date of a defendant's execution. This legislation was enacted soon after the United States Congress made major changes to the law governing federal habeas corpus petitions, the mechanism for challenging state convictions in federal court. It is important to consider the state and federal legislation together because they significantly alter the legal landscape of postconviction proceedings.

A criminal prosecution in North Carolina potentially consists of three stages: trial and direct appeal, state postconviction proceedings, and federal habeas corpus proceedings. A defendant first has the right to a trial and, if convicted, the right to appeal to the North Carolina appellate courts. The appeal during this first stage, called direct appeal or direct review, typically is limited to errors documented in the transcript of the trial—for example, allegedly erroneous rulings on the admissibility of evidence. If the appellate courts uphold the conviction on direct review, the defendant's next remedy is a motion for postconviction relief in state court, called a motion for appropriate relief. Such a motion typically raises matters that do not appear in the transcript of the trial. For example, a defendant might claim that his or her attorney failed to investigate possible defenses and therefore was ineffective. Often, such claims require additional evidence and hearings. Last, a defendant who has been unsuccessful in overturning his or her conviction in state court may petition for a writ of federal habeas corpus. In limited circumstances, a federal court may issue a habeas corpus writ to correct federal constitutional errors that occurred in the state proceedings, either at the trial and direct review stage or at the state postconviction stage.

Federal Habeas Corpus Proceedings

The federal habeas corpus legislation, signed into law April 24, 1996, appears in Title I of the "Antiterrorism and Effective Death Penalty Act of 1996."[1] Title I contains two sets of habeas corpus changes. The first set applies to both capital and noncapital cases. These provisions became law on April 24, 1996, but Congress did not specify how they apply to pending cases. The second set of changes applies only to capital cases arising in states that meet specified criteria, called "opt-in" states. This latter set of changes contains the only, specific effective-date provision in Title I, which states that the special capital case procedures apply to cases pending on or after the date of enactment.

Federal provisions applicable to capital and noncapital cases. The Antiterrorism and Effective Death Penalty Act establishes a one-year time limit on the filing of a petition for a federal writ of habeas corpus in both capital and noncapital cases. The one year begins to run from the latest of several events, typically from the conclusion of direct review.[2] The one-year time period is tolled—it does not run—while a properly filed application for postconviction relief is pending in state court. The one year does run, however, during any period in which an application is not pending. For example, if a North Carolina defendant takes 100 days to file a motion for appropriate relief after completion of direct review, he or she will

1. Title I amends several habeas corpus statutes, mostly in 28 U.S.C. Ch. 153, and creates a new Ch. 154.

2. The federal legislation does not state whether "direct review" is complete when the state appellate courts uphold a conviction or only after the United States Supreme Court concludes certiorari proceedings. The portion of the legislation applicable to opt-in states, in contrast, specifically states that the time for filing a habeas corpus petition runs from final state court affirmance of a conviction. Thus, Congress may have intended by the more general reference to "direct review" to include certiorari proceedings before the United States Supreme Court as well as state court appellate review. *See also* Griffith v. Kentucky, 479 U.S. 314, 321 n.6, 107 S. Ct. 708, 93 L. Ed.2d 649 (1987) (conviction is "final" when time for petition for certiorari has elapsed or petition for certiorari has finally been denied).

have 265 days left to file a federal habeas corpus petition. Thus, the federal legislation forces defendants to move quickly in state postconviction proceedings if they wish to preserve their right to seek federal habeas corpus relief.

The federal legislation also deals with the power of federal courts to overturn state court decisions. For example, the new law provides that if the state court adjudicates a claim on the merits, a federal court may not overturn the state court's decision unless it was (1) contrary to, or involved an unreasonable application of, clearly established federal law or (2) based on an unreasonable determination of the facts in light of the evidence presented in state court. The new law also provides that if the defendant fails to develop the factual basis of a claim in state court, the federal courts ordinarily may not hold an evidentiary hearing to allow the defendant to develop the facts. It is not yet clear how much these and other standards in the new law depart from existing United States Supreme Court precedent, which already restricts federal court review of state proceedings. Congress's general purpose is clear, however: to make state courts the primary forum for raising and litigating postconviction challenges.

Federal provisions applicable to "opt-in" states. The federal legislation establishes an even faster postconviction procedure for qualifying, or "opt-in," states. These expedited procedures apply to capital cases only.

In opt-in states, a defendant who has been sentenced to death has 180 days—not one year—to file a federal habeas corpus petition. The six-month time period begins to run after final state court affirmance of a conviction. The time is suspended while the United States Supreme Court is considering a certiorari petition on direct review, while state postconviction proceedings are pending, or for an additional period, not exceeding 30 days, on a showing of good cause.[3] The special habeas corpus provisions impose deadlines on federal court action as well. For example, a federal district court must render a final decision on a habeas petition within 180 days of filing. The provisions limiting federal court review of state court decisions, discussed briefly above, also apply to cases arising in opt-in states.

The states to which these expedited procedures apply are those that have established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel for indigent defendants in state postconviction proceedings. The state must establish competency standards for postconviction counsel and must offer such counsel to all defendants who receive a death sentence. Also, counsel who represented the defendant at trial or on direct appeal may not represent the defendant in postconviction proceedings unless the defendant and counsel expressly request continued representation.

Does North Carolina qualify as an opt-in state? In a decision issued April 30, 1996, the federal district court for the Western District of North Carolina held that North Carolina does not meet the opt-in requirements.[4] North Carolina has since made a number of changes to its appointment-of-counsel procedure in capital cases (discussed below), but it remains unclear whether the expedited capital procedures apply here.

State Postconviction Proceedings: Capital Cases

Chapter 719 (H 9) makes several changes to postconviction procedures in state court. Some provisions apply to both capital and noncapital cases. Others apply to capital cases only. This part of the bulletin isolates the changes relevant to capital cases. The changes become effective June 21, 1996, except that the 120-day deadline for filing a motion for appropriate relief (discussed below) applies only to cases in which the trial court enters judgment on a conviction after October 1, 1996.

Appointment of counsel. Chapter 719 revises G.S. 7A-451 by making several changes to the procedure for appointment of postconviction counsel in capital cases. First, the act modifies an indigent defendant's entitlement to court-appointed postconviction counsel. On request by an indigent defendant, the superior court must appoint two counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The defendant is presumed indigent if he or she was adjudicated indigent for purposes of trial or direct appeal.

Second, the act addresses the timing of appointment of postconviction counsel. An indigent defendant *may apply* for appointment of counsel while his or her direct appeal is still pending before the North Carolina Supreme Court. The defendant *must apply* no later

3. In this portion of the legislation, it is clear that the time period begins to run from the state court's affirmance of the conviction, not from the denial of certiorari by the United States Supreme Court; however, once the defendant files a certiorari petition, the time is suspended while the Court considers the petition.

4. Noland v. Dixon, Case No. 3:88 CV 217.

than ten days from the latest of several specified events, typically the denial of certiorari by the United States Supreme Court on direct review. The failure to meet this deadline triggers other procedures. Thus, under revised G.S. 15-194 (discussed further below), the warden must schedule an execution date if certain events occur. One triggering event is an indigent defendant's failure to make a timely request for the appointment of counsel.[5]

Third, the act addresses who may serve as counsel. Appointment and compensation of counsel must comply with the North Carolina State Bar's Rules and Regulations Relating to the Appointment of Counsel for Indigent Defendants. (Currently, those rules establish minimum qualifications for trial and appellate work in capital cases, but they do not specifically address postconviction work.) The court may not appoint as postconviction counsel anyone who represented the defendant at trial or on direct appeal unless the defendant requests continued representation and waives any allegations of ineffective assistance of counsel. The court may appoint counsel recruited by the Appellate Defender's office, which has the statutory responsibility under G.S. 7A-486.3 to recruit attorneys to represent defendants in capital postconviction proceedings.

Time limit for filing motion for appropriate relief. In one of the major changes in state postconviction procedure, the act amends G.S. 15A-1415 and 15A-1419 to establish a 120-day time limit on the filing of motions for appropriate relief in capital cases. Failure to file a timely motion for appropriate relief constitutes grounds for denial of the motion. Previously, the law did not impose a specific time limit on such motions. Unlike the remainder of the act, which becomes effective June 21, 1996, the time limit applies only to cases in which the trial court enters judgment on a conviction after October 1, 1996.

The 120-day time period runs from the latest of several events. Typically, the time starts to run after one of two events. If postconviction counsel is appointed *before the denial of certiorari* by the United States Supreme Court on direct appeal, the time starts to run upon the denial of certiorari. If postconviction counsel is appointed *after the denial of certiorari*, the time starts to run upon appointment of counsel.

A defendant may file a motion for appropriate relief after the 120-day deadline in the following three instances:

1. For good cause, the court may grant an extension of time up to 30 days. Upon a finding of extraordinary circumstances, the court may grant a longer extension.

2. The court may excuse the filing of an untimely motion if the defendant demonstrates good cause and actual prejudice or a fundamental miscarriage of justice. Revised G.S. 15A-1419 defines the meaning of these terms.

3. The 120-day deadline does not apply to motions based on newly-discovered evidence. The defendant must file such claims within a reasonable time after discovery.

The new state time limits do not necessarily mesh with the new federal time limits. Although North Carolina law may grant a defendant time to take action in state court, that time still may count against the limitations period for federal habeas corpus petitions. For example, for states that do not qualify as opt-in states, the one-year time limit on the filing of federal habeas corpus petitions ordinarily starts upon the conclusion of direct review. The one-year time limit continues to run until the defendant applies for state postconviction relief. What happens, however, if it takes several months for the state court to find counsel to represent the defendant in state postconviction proceedings? Under state law, the time before appointment does not count against the 120-day time limit for filing of a motion for appropriate relief. Under federal law, that time may count against the one-year time limit for filing of a federal habeas corpus petition. (Whether the federal time limit may be equitably tolled pending appointment of state postconviction counsel is not clear.)

Amendments to motion. Suppose a defendant files a timely motion for appropriate relief but thereafter finds it necessary to bring additional claims to the court's attention. May the defendant raise the claims after the 120-day deadline has passed? New G.S. 15A-1415(g) grants the defendant that right. It allows amendments to a motion for appropriate relief up to 30 days before a hearing on the merits or at any time before the court schedules the hearing, whichever is later. If the defendant amends the motion, the state

5. It does not appear, however, that an indigent defendant loses the right to court-appointed postconviction counsel by failing to meet the ten-day deadline. Under G.S. 7A-457, which did not change, an indigent person waives the right to counsel only if the court finds that the waiver was knowing and voluntary. The failure to make a timely request for counsel, standing alone, would not seem to meet that standard.

is entitled to a continuance of 30 days. Once the hearing has started, the defendant may amend the motion only to conform to the evidence adduced at the hearing.

Failure to raise claim in previous motion for appropriate relief. G.S. 15A-1419(a)(1) has provided that a court may deny a claim if, upon a previous motion for appropriate relief, the defendant was in a position to raise the claim but failed to do so. The act revises that section to require a court to deny a claim based on the deprivation of the right to counsel if the defendant was in a position to raise the claim and failed to do so. Previously, right-to-counsel claims were excluded from the default provisions in G.S. 15A-1419(a)(1). The court may excuse a default if the defendant demonstrates good cause and actual prejudice or a fundamental miscarriage of justice (the same standard for excusing a failure to meet the new 120-day filing deadline, discussed above). The act also provides that the requirement of raising all claims does not apply to motions for appropriate relief made within 10 days after entry of judgment or during the pendency of direct appeal. For example, if the defendant makes a motion for appropriate relief during the pendency of the direct appeal, the failure to raise a claim in that motion does not bar the defendant from raising the claim in a later motion for appropriate relief.

Waiver of attorney-client privilege. An attorney ordinarily may not disclose communications between the attorney and client without the client's consent. New G.S. 15A-1415(e) provides for waiver of the privilege protecting attorney-client communications when a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for post-conviction relief. The new section provides that the attorney-client privilege is waived between the defendant and the counsel alleged to have been ineffective to the extent that the counsel reasonably believes that the communications are necessary to defend against the allegations of ineffectiveness. Stated another way, an attorney alleged to have been ineffective may disclose communications with the defendant to the extent reasonably necessary to defend against the allegations.[6]

New G.S. 15A-1415(e) states further that the waiver of the attorney-client privilege is automatic upon the filing of a motion for appropriate relief alleging ineffectiveness and that the superior court need not enter an order waiving the privilege. This provision apparently was intended to eliminate the need for court proceedings on the question of waiver. It may not always have that effect, however, because the statute uses an objective test for waiver. An attorney may disclose attorney-client communications only to the extent that his or her belief in the need to do so is *reasonable*. This is a matter of judgment. If the defendant does not agree to disclosure, the attorney may not be certain that disclosure is reasonable without a judicial determination.

Discovery rights. New G.S. 15A-1415(f) establishes two "discovery" rights in postconviction proceedings in capital cases. First, the defendant's trial and appellate counsel must make their complete files in the case available to postconviction counsel for the defendant. This provision settles any question that may have existed about prior counsel's obligations.[7]

Second, the state must make available to post-conviction counsel the complete files of all law-enforcement and prosecutorial agencies involved in the investigation and prosecution of the crimes. The act places two limits on the state's obligation. G.S. 15A-1415(f) provides that the state, "to the extent allowed by law," must make the files available to capital postconviction counsel. In other words, the statute does not require disclosure when other laws prohibit it. Also, if the state has a reasonable belief that inspection of some of the files would not be in the interest of justice, the state may submit those portions to the court for inspection. The court may allow the state to withhold the information only if it finds that the information could not assist the defendant in investigating, preparing, or presenting a motion for appropriate relief.

Filing and hearing procedure. The act completely rewrites G.S. 15A-1420(b1), which contains the procedure for initiating state post-conviction proceedings. Under the rewritten section, a state postconviction proceeding commences with the filing of a motion for appropriate relief with the superior court clerk of the district where the defendant was indicted. In capital cases, the defendant must

6. This standard is similar to the rule announced in State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990). There, the North Carolina Supreme Court held that a defendant alleging ineffective assistance of counsel as a ground for postconviction relief waives the privilege with respect to matters relevant to the allegations of ineffectiveness.

7. The Comment to Rule 2.8 of the Rules of Professional Conduct of the North Carolina State Bar has directed counsel to turn over the case files to successor counsel, but has allowed prior counsel to withhold personal notes and incomplete work product related to the case. The new section overrides any such limitation.

serve a copy of the motion on the district attorney for the district and the attorney general. The clerk places the motion on the criminal docket and brings the motion to the attention of the resident judge or any other judge holding court in the county or district.

The revised section does not impose a time limit on the judge's review of the motion, but once the judge has reviewed it, he or she must enter an order directing the state to file an answer within 60 days of the date of the order. The judge also must calendar the case for hearing if one is necessary. The section requires that the hearing take place without unnecessary delay but does not otherwise specify a time for the hearing.

Revised G.S. 15A-1420(c) makes minor changes to hearing procedures. A judge may hold a prehearing conference upon the motion of either party. Also, if the judge determines that the motion presents only questions of law and an evidentiary hearing is unnecessary, the defendant does not have the right to be present when those questions of law are argued.

Scheduling of executions. G.S. 15-194 has regulated the setting of execution dates in capital cases. Previously, when the North Carolina Supreme Court affirmed a sentence of death on direct appeal, the state would have to schedule a hearing before a superior court judge, who would set an execution date. The capital defendant then would apply for and eventually receive a stay of execution pending the filing of a motion for appropriate relief. Thus, the case returned to essentially the same posture as before the proceedings.

Revised G.S. 15-194 eliminates these steps, authorizing the warden of the state penitentiary in Raleigh (Central Prison) to schedule the execution date. The warden must schedule the execution for not less than 30 nor more than 45 days from the date he or she receives notice of any one of several events. The latest possible event is the issuance of an opinion by the United States Supreme Court upholding the sentence of death after completion of initial state and federal postconviction proceedings. The warden must send a certified copy of the document fixing the execution date to the following people: the superior court clerk of the district where the defendant was indicted; the defendant; the defendant's attorney; the district attorney who prosecuted the case; and the attorney general.

Although the revised statute simplifies the scheduling process, litigation over stays of execution still may occur. The procedure appears straightforward when a defendant pursues every avenue of review after the conclusion of direct review: The warden does not set an execution date until after initial state and federal postconviction proceedings come to an end. Suppose, however, that the defendant omits a step in the review process. For example, suppose that the defendant files a motion for appropriate relief, the trial court denies the motion, and the North Carolina Supreme Court upholds the denial. The defendant then fails to file a timely petition for certiorari in the United States Supreme Court. The defendant may continue to seek relief in federal habeas corpus proceedings. Under revised G.S. 15-194, however, the warden must set an execution date upon receiving notice of *any one of the listed events*, including the failure to file a certiorari petition in the United States Supreme Court after denial of a motion for appropriate relief. In those circumstances, the defendant would have to seek a stay of execution pending federal postconviction proceedings.

State Postconviction Proceedings: Noncapital Cases

This part of the bulletin identifies the changes in Ch. 719 affecting noncapital cases and briefly compares them with the procedures in capital cases. All of the noncapital changes become effective June 21, 1996.

Appointment of counsel. Chapter 719 makes no special provision for the appointment of state postconviction counsel in noncapital cases. Appointment continues to be governed by G.S. 7A-451(a)(3), which provides that an indigent defendant is entitled to postconviction counsel if he or she has been convicted of a felony, has been fined $500 or more, or has been sentenced to a term of imprisonment.

Time limit for filing motion for appropriate relief. A defendant convicted of a noncapital offense may file a motion for appropriate relief in state court at any time. The act does not place a specific time limit on such motions. Defendants who wish to seek federal habeas corpus relief, however, still must comply with the one-year time limit established by federal law. Thus, the timing of a state postconviction motion in a noncapital case may be critical. For example, suppose a defendant convicted of a noncapital offense files a motion for appropriate relief 18 months after the defendant's conviction is upheld on direct review. Under state law, such a motion is proper. If the state court denies the motion, however, the defendant may not be able to seek federal habeas corpus relief. Under federal law, a defendant

ordinarily has one year after affirmance of the conviction on direct appeal to file a federal habeas corpus petition.

Amendments to motion. The new provisions on amendments to motions for appropriate relief appear to have been designed primarily with capital cases in mind. Under new G.S. 15A-1415(g), a capital defendant may amend a previously-filed motion after the 120-day time limit on filing has passed. Nevertheless, the new section also appears to apply to noncapital cases. Thus, a noncapital defendant has the right to amend a motion for appropriate relief up to 30 days before the commencement of a hearing on the merits or at any time before the court schedules the hearing, whichever is later. Once the hearing has started, the defendant may amend the motion only to conform to the evidence adduced at the hearing.

Failure to raise claim in previous motion for appropriate relief. The changes discussed above with respect to capital cases also apply to noncapital cases.

Waiver of attorney-client privilege. The changes discussed above with respect to capital cases also apply to noncapital cases.

Discovery rights. One major difference between the capital and noncapital postconviction provisions is in the area of discovery. New G.S. 15A-1415(f) recognizes two "discovery" rights of the defendant in postconviction proceedings—the right to the files of prior trial and appellate counsel and the right to the files of law-enforcement and prosecutorial agencies. By its express terms, the new section applies to capital cases only.

Filing and hearing procedure. For the most part, the changes in procedure in revised G.S. 15A-1420 apply equally to capital and noncapital cases. There are two small differences. First, a noncapital defendant need only serve a motion for appropriate relief on the district attorney in the district where the defendant was indicted (not on both the district attorney and the attorney general, as in capital cases). Second, upon review of a motion for appropriate relief in a noncapital case, the judge determines whether the state must file an answer and, if necessary, enters an order directing the state to do so. In capital cases, once the judge reviews the motion, he or she must enter an order requiring the state to file an answer within 60 days of the date of the order.

Other Criminal Procedure Changes

District court jurisdiction over Class H and I felonies. Chapter 725 (S 33), effective for offenses committed on or after December 1, 1996, enables district court judges to accept guilty pleas to Class H and I felonies in some circumstances. Previously, only superior court judges had jurisdiction to accept pleas in felony cases. Under amended G.S. 7A-272, a district court judge may accept a guilty plea to a Class H or I felony *but only if* the presiding district court judge, the prosecutor, and the defendant consent.

The act establishes two different procedures for bringing a plea agreement before a district court judge. If the defendant has not been indicted and the case is still pending in district court, the prosecution must file an information (pursuant to new G.S. 15A-644.1), to which the defendant then enters a plea. In cases in which the defendant has been indicted and the case transferred to superior court, the presiding superior court judge may retransfer the case to district court (pursuant to new G.S. 15A-1029.1) for entry of plea. In both instances, the district court must make a complete record of the plea proceeding (pursuant to new G.S. 7A-191.1) and must comply with the applicable provisions of G.S. Chapter 15A in conducting the plea proceeding (pursuant to new G.S. 7A-272(d) and 15A-1029.1). Any appeal from the proceeding is to the appellate division.

Elimination of mandatory arraignment in superior court. Arraignment is the stage of a criminal case in which a judge having jurisdiction to try the case advises the defendant of the pending charges, asks the defendant how he or she wants to plead, and ensures that the defendant, if not represented by counsel, understands his or her right to counsel. Chapter 725 (S 33), effective for offenses committed on or after December 1, 1996, eliminates arraignment in superior court unless the defendant requests it. Under revised G.S. 15A-941 and 15A-942, a defendant is not entitled to an arraignment unless he or she files a written request with the clerk of superior court within 21 days after service of the bill of indictment or, if no service is required, within 21 days after return of a true bill of indictment. Immediately upon return of an indictment, the superior court must mail or otherwise give notice of the 21-day time limit to the defendant and his or her counsel. If the defendant does not file a timely, written request for arraignment, the court enters a plea of not guilty on the defendant's behalf. If the defendant does not have counsel and does not request arraignment, the superior court must ensure that the defendant is aware of and has the opportunity to exercise the right to counsel.

The act also revises G.S. 15A-952, which sets deadlines for the filing of pre-arraignment motions. If the defendant files a timely, written request for arraignment, the deadlines for the filing of pre-arraignment motions remain the same. If the

defendant does not request an arraignment, the defendant must file such motions within 21 days after the return of a true bill of indictment.

Regulation of bail bondsmen. Chapter 726 (S 534) makes several, technical changes to licensing requirements for bail bondsmen, contained in G.S. Chapter 58, Art. 71. The changes have no effect on the setting or forfeiture of bond under G.S. Chapter 15A.

Criminal Law

More new assault offenses. The General Assembly created several new assault offenses in 1996 with enhanced punishments. Sections 20.13 and 20.14B of Ch. 18 (2d Ex. Sess.) (H 53) create the following offenses.

Under new G.S. 14-32.4, a person is guilty of *assault inflicting serious bodily injury*, a Class F felony, if the person assaults another and inflicts "serious bodily injury" as defined in the new statute. "Serious bodily injury" includes, among other things, bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in prolonged hospitalization. Assault inflicting serious injury (as opposed to serious bodily injury) remains a Class A1 misdemeanor under current G.S. 14-33(c). The new statute applies to offenses committed on or after January 1, 1997.

Under new G.S. 14-34.7, a person is guilty of *assault on a law-enforcement officer inflicting serious bodily injury*, a Class F felony, if the person assaults an officer in the performance of the officer's duties and inflicts serious bodily injury. (No definition of "serious bodily injury" is given.) The new statute applies to offenses committed on or after December 1, 1996.

Last year the General Assembly enacted G.S. 14-34.6, which created three new classes of assault on certain emergency personnel: simple assault, a Class A1 misdemeanor; assault inflicting bodily injury or with a deadly weapon other than a firearm, a Class I felony; and assault with a firearm, a Class F felony. This year the General Assembly revised G.S. 14-34.6 to create the same three offense classes for *assault on a firefighter*. The revised statute also clarifies that a person must inflict serious bodily injury, not just bodily injury, to be convicted of the Class I felony assault. (No definition of "serious bodily injury" is given.) The revisions apply to offenses committed on or after December 1, 1996.

Food stamp fraud. In 1995 the General Assembly lowered from $2,000 to $1,000 the amount required for conviction of felony food stamp fraud, a Class I felony. Section 24.31 of Ch. 18 (2d Ex. Sess.) (H 53) again amends G.S. 108A-53(a) to lower the threshold for a felony to $400. Food stamp fraud of $400 or less is a Class 1 misdemeanor. The act applies to offenses committed on or after December 1, 1996.

Sale of handguns to minors. Section 20.13 of Ch. 18 (2d Ex. Sess.) (H 53), effective for offenses committed on or after January 1, 1997, revises G.S. 14-315(a1) to increase from a Class I to Class H felony the penalty for selling a handgun to a minor.

Sale of controlled substances to minors or pregnant women. Section 20.13 of Ch. 18, effective for offenses committed on or after January 1, 1997, also revises G.S. 90-95(e)(5) to increase from a Class E to Class D felony the penalty for selling controlled substances to a person under 16 years of age or to a pregnant female.

Bombing and burning of religious structures. In response to a series of destructive acts in North Carolina and other parts of the South, the General Assembly passed Ch. 751 (H 1458), which creates two new statutes enhancing the penalties for bombing and burning religious structures. New G.S. 14-49(b1) increases from a Class G to Class E felony the penalty for using any explosive or incendiary device to damage a church, chapel, synagogue, mosque, masjid, or other building of worship. Using explosives to damage other sorts of real property remains a Class G felony under G.S. 14-49(b). New G.S. 14-62.2 increases from a Class F to Class E felony the penalty for setting fire to or burning a church, chapel, or meetinghouse. Both statutes apply to offenses committed on or after June 21, 1996.

Soliciting child by computer for unlawful sex act. Chapter 632 (H 207), effective for offenses committed on or after December 1, 1996, enacts G.S. 14-202.3 to create a new offense of solicitation of a child by computer, a Class I felony. The elements of the offense are that the defendant

1. is 16 years of age or older and
2. knowingly and with the intent to commit an unlawful sex act
3. entices, advises, coerces, orders, or commands
4. by means of a computer

5. a person under 16 years of age

6. who is at least three years younger than the defendant

7. to meet with the defendant or any other person

8. for the purpose of committing an unlawful sex act.

The new statute provides that the North Carolina courts have jurisdiction to hear the case if the transmission that constitutes the offense either originates or is received in North Carolina.

Abduction of children. Ch. 745 (H 1301), effective for offenses committed on or after January 1, 1997, rewrites the definition of abduction of a child under G.S. 14-41. A defendant is guilty of abduction of a child if the defendant

1. without legal justification or defense

2. abducts or induces to leave

3. a person under 18 years of age

4. who is at least four years younger than the defendant

5. from any individual, agency, or institution lawfully entitled to the custody, placement, or care of the person.

Previously, the statute applied only to children under 14 years of age residing with certain relatives, with a guardian, or at a school. The offense remains a Class F felony.

Blue light bandit. Ch. 712 (S 359), effective for offenses committed on or after December 1, 1996, increases the penalties for unlawfully operating a vehicle with a blue light on a public street, highway, or public vehicular area. The act revises G.S. 14-277, impersonation of a law-enforcement officer, by making it: (1) a Class I felony (now a Class 1 misdemeanor) to operate a vehicle with an operating blue light; and (2) a Class H felony (now a Class 1 misdemeanor) to operate a vehicle with a blue light in such a manner as to cause a reasonable person to yield the right-of-way or stop his or her vehicle.

The act also changes the penalty for the offense of operating a vehicle *with a red light* in such a manner as to cause a reasonable person to yield or stop. That offense remains a Class 1 misdemeanor, but the judge may impose an intermediate punishment even though the structured sentencing rules for misdemeanors may authorize only a community punishment. The judge need not impose a minimum term of 72 hours imprisonment as a condition of a suspended sentence, as previously required under G.S. 14-277.

Pine straw theft in Montgomery County. The General Assembly passed a local act, applicable only in Montgomery County, raising the penalties for stealing pine straw and trespassing on land used for the production of pine straw. Chapter 601 (S 1409), effective for offenses committed on or after December 1, 1996, makes it a Class H felony in Montgomery County to commit larceny of pine needles or pine straw being produced on the land of another regardless of the value of the pine straw stolen. Elsewhere, the general larceny statute, G.S. 14-72, continues to control; it makes larceny of property of $1,000 or less a Class 1 misdemeanor and larceny of property of more than $1,000 a Class H felony. The act also makes it a Class 1 misdemeanor in Montgomery County to trespass on property posted with notices prohibiting the raking or removing of pine needles or pine straw without the owner's consent. A second or subsequent offense is a Class I felony. Elsewhere, the general trespass statutes, G.S. 14-159.12 and 14-159.13, continue to control; they make first-degree trespass a Class 2 misdemeanor and second-degree trespass a Class 3 misdemeanor.

Juvenile Law

Maximum period of commitment to training school. G.S. 7A-652 governs the length of commitment of a juvenile to training school. In very limited circumstances, a judge may impose a definite term of commitment—that is, one that specifies the amount of time a juvenile must remain in training school. In most instances, however, the judge must impose an indefinite term of commitment not to exceed the juvenile's eighteenth birthday. G.S. 7A-652(c) has placed the following limitation on the length of an indefinite commitment: It may not be for a period longer than "that period for which an adult could be committed for the same act."

The inception of structured sentencing for adults in October 1994 created uncertainty about how to apply the above-quoted language. Under structured sentencing, the length of an adult's sentence depends on the number and nature of his or her prior convictions. The more serious the adult's criminal record, the longer the possible sentence. This variation in sentence length has created uncertainty about how to

interpret G.S. 7A-652(c), which ties the length of an indefinite commitment to the sentence that an adult could receive for the same act. Three possible interpretations of G.S. 7A-652(c), in light of structured sentencing, have been discussed.

1. A juvenile ordinarily has no prior criminal convictions, so the maximum commitment may not exceed the maximum sentence that an adult with no prior convictions could receive.

2. A juvenile's prior adjudications of delinquency are the equivalent of prior convictions, so the maximum commitment time may not exceed the maximum sentence that an adult with that number and kind of convictions could receive.

3. The maximum length of a juvenile's commitment may not exceed the maximum sentence that *any* adult—not an adult with a record like the juvenile's—could receive for the same act.

Chapter 609 (H 1207) resolves this uncertainty—for offenses committed on or after December 1, 1996—by codifying the third option. As amended, G.S. 7A-652(c) provides that a juvenile's commitment may not exceed "the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense." The act also amends G.S. 7A-456 (the Juvenile Code purpose statement) to clarify that structured sentencing does not apply to juveniles except to the extent that it places the above limitation on training school commitments.

These changes mean that a juvenile—even one with no prior convictions or delinquency adjudications—may be kept in training school for as long as an adult with the worst possible record could be sentenced for the same act. A juvenile may not actually stay that long, however. G.S. 7A-652(b) continues to provide that any commitment may not extend beyond the juvenile's eighteenth birthday. Also, the Department of Youth Services may release a juvenile, conditionally or unconditionally, pursuant to its authority under G.S. 7A-655.

The act makes one other change concerning juvenile commitment. Revised G.S. 7A-652(c) provides that if a judge commits a juvenile for an offense that would be a Class 3 misdemeanor if done by an adult, the juvenile must be placed in a local or regional detention facility rather than in training school.

The above changes apply to offenses committed on or after December 1, 1996. Until the appellate courts address the issue, the maximum length of commitment for offenses committed before December 1, 1996, remains uncertain.

Retention of jurisdiction to transfer juvenile for trial as adult. In State v. Dellinger, 343 N.C. 93, 465 S.E.2d 218 (1996), the North Carolina Supreme Court addressed the circumstances in which a juvenile who commits an offense while less than 16 years old may be tried as an adult. (A person who is 16 or 17 years old at the time of the offense is automatically tried as an adult.) The court first held that the North Carolina Juvenile Code does not permit the trial of a juvenile as an adult for an act committed when the juvenile was less than 13 years old. Some court of appeals' decisions had held that once the juvenile reached 18, he or she could be tried as an adult for acts committed when less than 13. The supreme court in *Dellinger* overruled those cases, recognizing that a juvenile's act before age 13 is not an adult crime and the mere passage of time does not convert the act into a crime.

Second, *Dellinger* held that the Juvenile Code permits the trial of a juvenile as an adult for a felony committed when 13, 14, or 15 years old if the juvenile court transfers the case to superior court for adult trial. However, the juvenile court must make this determination before the juvenile turns 18 years of age, when the juvenile court loses jurisdiction over the juvenile. If the state has not obtained transfer of the case by then, it may not later seek to prosecute the juvenile as an adult.

Section 23.2 of Ch. 18 (2d Ex. Sess.) (H 53) revises G.S. 7A-523 and 7A-524 to reverse the second part of *Dellinger*. Revised G.S. 7A-523, effective August 3, 1996, provides that if a juvenile turns 18 years of age before the juvenile court obtains jurisdiction over a felony and any related misdemeanors allegedly committed at age 13, 14, or 15, the court has jurisdiction for the following limited purposes:

- conducting a probable cause hearing pursuant to G.S. Chapter 7A, Art. 49, and

- either transferring the juvenile to superior court for trial as an adult or dismissing the petition.

Revised G.S. 7A-524, effective for cases pending on or after August 3, 1996 (note the difference in effective-date language), provides that if the juvenile

court does obtain jurisdiction before the juvenile turns 18 years of age but delinquency proceedings cannot be concluded before the juvenile turns 18, the court retains jurisdiction for the same limited purposes. The act does not affect the first part of *Dellinger* concerning acts committed before age 13.

Fingerprinting and photographing of juveniles. Section 23.2 of Ch. 18 (2d Ex. Sess.) (H 53), effective for offenses committed on or after October 1, 1996, adds new G.S. 7A-603 to the Juvenile Code. The new section requires law-enforcement officers to fingerprint and photograph a juvenile after an adjudication of delinquency if

- the offense would be a Class A through E felony if committed by an adult, and
- the juvenile was ten years of age or older at the time of the offense.

The fingerprints and photographs must be transferred to the State Bureau of Investigation, which may use them for all investigative and comparison purposes. The fingerprints and photographs are not public records, may not be included in the record maintained by the clerk of court, must be maintained separately from any juvenile record, must be withheld from public inspection, and are not eligible for expunction.

The act also clarifies G.S. 15A-502(c), which provides that law-enforcement officers may not fingerprint and photograph juveniles upon arrest except as provided in the Juvenile Code. Effective for offenses committed on or after October 1, 1996, the revised section only restricts fingerprinting and photographing of juveniles *alleged to be delinquent.* This change appears to allow officers to take fingerprints and photographs of a juvenile upon arrest and without a court order if the juvenile is 16 or 17 years old at the time of the offense and thus no longer subject to delinquency proceedings.

Notification before consideration of release of juveniles. Section 23.2 of Ch. 18 (2d Ex. Sess.) (H 53) requires the Division of Youth Services to give notice to certain people before considering the release of a juvenile who is serving a commitment for a Class A or B1 felony (first-degree murder, first-degree rape, or first-degree sexual offense). At least thirty days before considering release, the Division must notify by first class mail: the juvenile; the juvenile's parent, guardian, or custodian; the district attorney where the juvenile was adjudicated delinquent; the head law-enforcement agency that took the juvenile into custody; the victim; and any of the victim's immediate family members who have requested in writing to be notified. The Division shall include in the notice only the juvenile's name, offense, date of commitment, and date of consideration for release. The legislation applies to juveniles considered for release on or after October 1, 1996.

Payment of court-ordered treatment of juvenile. G.S. 7A-647 sets out dispositional options for a juvenile who has been adjudicated abused, neglected, dependent, undisciplined, or delinquent. Among other things, the judge may require the juvenile to receive psychiatric, psychological, or other treatment. Chapter 609 (H 1207) modifies the procedures for determining who must pay for court-ordered treatment. As revised, G.S. 7A-647 requires the following:

- As under current law, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other expert to determine the juvenile's treatment needs.
- Upon completion of the examination, the judge must conduct a hearing to determine whether the juvenile needs medical, psychiatric, psychological, or other treatment and, if the juvenile does, who should pay for it.
- The county manager in the county of the juvenile's residence (or designee of the county board of commissioners) must be notified of and allowed to be heard at the postexamination hearing.
- As under current law, if the judge finds that the juvenile needs treatment, the judge must allow the parent or other responsible person to arrange for it. If the parent refuses or is unable to arrange for the treatment, the judge *may order* that the juvenile obtain treatment and that the parent pay for it.
- If the judge finds that the parent is unable to pay for treatment, the judge *must order* the county to arrange and pay for the treatment. The county department of social services must recommend a facility to provide the treatment.

The act also amends G.S. 7A-650(b1), which authorizes a judge to order a parent to participate in a juvenile's treatment. In determining who should pay for that treatment, the judge must follow the same procedures as in revised G.S. 7A-647.

According to the act, these changes take effect December 1, 1996, and apply to "dispositions for offenses committed on or after that date." In cases involving delinquent or undisciplined juveniles, which concern acts akin to offenses, the effective date is clear. In abuse, neglect, or dependency cases, however, it is less clear how to apply the quoted language.

After passing Ch. 609 during the regular session, the General Assembly returned to the topic of juvenile treatment costs during the second extra session. Section 24.21A of Ch. 18 (2d Ex. Sess.) (H 53) directs the Division of Youth Services and the Administrative Office of the Courts to study the following issues: whether counties should be allowed to present evidence of their financial status in each case in which the court orders treatment under G.S. 7A-647; and whether the state should pay the cost of treatment when counties are unable to do so. The agencies must submit the study to the General Assembly by December 1, 1996.

Motor Vehicles

Driving over 80 miles per hour. Chapter 652 (S 1270), effective October 1, 1996, authorizes the Department of Transportation to establish speed limits of 70 miles per hour on any part of a controlled-access highway. In conjunction with these changes, the act addresses driving over 80 miles per hour. Under revised G.S. 20-141, it is a Class 2 misdemeanor to drive over 80 miles per hour or more than 15 miles per hour over the speed limit. It is a Class 1 misdemeanor to drive over 80 miles per hour, or over 55 miles per hour and 15 miles over the speed limit, while fleeing or attempting to elude arrest. The act also revises G.S. 20-16.1(a) by requiring a thirty-day suspension of the license of any driver for a first offense involving driving over 80 miles per hour or driving over 55 miles per hour and 15 miles over the speed limit. Under G.S. 20-16.1(b), a first offender may receive a limited driving privilege; under G.S. 20-16.1(c), a person convicted of a second offense loses his or her license for 60 days.

Firearms

Preemption of local gun laws. Chapter 727 (H 879), effective June 21, 1996, creates a new Art. 53C in G.S. Chapter 14 preempting local gun regulations except in specified circumstances. New G.S. 14-409.40 prohibits counties and municipalities from regulating the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, ammunition, or firearm parts, or dealers in such wares. G.S. 14-409.40 also provides that counties and municipalities may not have more stringent regulations for firearms shows than those for other types of shows.

The new statute does not bar the following local ordinances and regulations:

- Ordinances prohibiting the sale of firearms along with other commercial activities in a particular area;
- Zoning plans prohibiting commercial activities near a school except with a special use permit indicating that the commercial activity does not pose a danger to the health or safety of people attending the school;
- Regulations concerning the transportation, carrying, or possession of firearms by local government employees in the course of their employment; and
- Regulations authorized by other statutes (such as G.S. 14-415.23, which allows localities to prohibit concealed weapons in local government buildings, adjoining parking areas, and public parks), except that a person may store a firearm within a motor vehicle notwithstanding a local ban on firearms in the area.

Domestic Violence

Domestic violence protective orders. Chapter 591 (H 686), effective October 1, 1996, makes several changes to the law governing domestic violence protective orders. Among other things, the act revises the procedures for enforcement of domestic violence protective orders under G.S. 50B-4. As amended, G.S. 50B-4 requires law-enforcement officers to arrest a person who violates a provision of a domestic violence protective order prohibiting abuse, harassment, and other interference under G.S. 50B-3(a)(9). (Revised G.S. 50B-4 continues to authorize an officer to make the arrest without a warrant, but it adds that nothing in the section prohibits an officer from securing a warrant.) Revised G.S. 50B-4 also requires law-enforcement agencies to enforce protective orders wherever issued in North Carolina. A further order of the court is not necessary. Last, G.S. 50B-4 requires

law-enforcement agencies to enforce valid protective orders issued by the courts of another state or Indian tribe.

For a further discussion of the changes affecting domestic violence protective orders, see the chapter on courts and civil procedure in *North Carolina Legislation 1996* (Institute of Government, 1996).

Abuser treatment program. Chapter 527 (S 402), passed during the 1995 legislative session, expanded the relief a court may order in a domestic violence protective order, but delayed the effective date of one of the changes. Effective October 1, 1996, G.S. 50B-3 authorizes a court to order any party responsible for acts of domestic violence to attend and complete an abuser treatment program that is approved by the Department of Administration and within a reasonable distance of the party's residence.

Involuntary Commitment

Involuntary commitment of people who are mentally retarded. Chapter 739 (S 859), effective for commitments on or after January 1, 1997, amends several statutes to eliminate involuntary commitment of people who are mentally retarded and, because of an accompanying behavior disorder, dangerous to others. A mentally retarded person may be involuntarily committed only if he or she is mentally ill and dangerous to self or others. If a respondent is mentally retarded in addition to being mentally ill and dangerous to self or others, the judicial official must so indicate on the custody or commitment order. The area mental health authority must designate the facility to which these respondents will be sent. Admission to a state psychiatric hospital is prohibited except in specified circumstances.

Chapter 739 also places two new duties on law-enforcement officers who transport respondents for involuntary commitment. It amends G.S. 122C-251(c) to require officers, to the extent possible, to advise respondents when taking them into custody that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and the safety of others. It also revises G.S. 122C-261 through 122C-263 to provide that individuals who are transported to a state facility for the mentally ill and who are not admitted by the facility may be transported by law-enforcement officers or designated staff to an appropriate 24-hour facility that provides psychiatric inpatient care.

The act makes several other changes to involuntary commitment procedures. For a further discussion of these changes, see the chapters on courts and civil procedure and on mental health in *North Carolina Legislation 1996* (Institute of Government, 1996).

Corrections

Post-release supervision, in general and for sex offenders. Under structured sentencing, a person convicted of a Class B1 through E felony must serve a period of post-release supervision after release from prison. To allow for this period of supervision, the Department of Correction must release the person from prison at least nine months before the expiration of his or her maximum prison term. Presently, however, the period of post-release supervision is six, not nine, months. Section 20.14 of Ch. 18 (2d Ex. Sess.) (H 53), effective December 1, 1996, revises G.S. 15A-1368.2(c) to extend the supervision period to nine months for most offenders. The act imposes a far longer period of post-release supervision—five years—when a person has been convicted of a Class B1 through E felony and is subject to the sex-offender-registration requirements of G.S. Chapter 14, Art. 27. A person is subject to the registration requirements if he or she has a "reportable conviction" as defined in G.S. 14-208.6(4).

The act also revises G.S. 15A-1368.4 to impose additional "controlling conditions" of post-release supervision for Class B1 through E offenses subject to the sex-offender-registration requirements. Violation of controlling conditions may warrant revocation of release and return to prison for service of the remaining sentence. The new conditions (but not the five-year period of post-release supervision) also apply to any offense involving physical, mental, or sexual abuse of a minor. The new conditions include, among other things:

- Not communicating with, being in the presence of, or being found in or on the premises of the victim;
- Not residing in a household with any minor child if the offense involved sexual abuse of a minor; and
- Not residing in a household with a minor child if the offense involved physical or mental abuse, unless permitted by the court.

Special conditions of probation for sex offenders. Section 20.14 of Ch. 18 (2d Ex. Sess.) (H 53), effective December 1, 1996, amends G.S. 15A-1343 to require special conditions of probation for

offenses that are subject to the sex-offender-registration statutes or that involve physical, mental, or sexual abuse of a minor. If the court imposes a probationary sentence, it must impose the same conditions as required for post-release supervision of such offenders, discussed above. The probation also must include supervision by a probation officer.

Parole and post-release supervision revocation proceedings. Section 20.15 of Ch. 18 (2d Ex. Sess.) (H 53), effective August 3, 1996, amends G.S. 15A-1376(b) and 15A-1368.6(b) to delete language allowing parolees and supervisees to waive their right to a preliminary hearing in a proceeding to revoke parole or supervised release.

Reimbursement to counties for housing costs of inmates. G.S. 148-29 has provided that the sheriff in charge of a person sentenced to prison must transfer him or her to the state prison for service of the sentence. Recently, however, a large number of prisoners have remained in county jails because there has been no room for them in state prison. Section 20.2 of Ch. 18 (2d Ex. Sess.) (H 53), effective January 1, 1996, amends G.S. 148-29 to provide for reimbursement to the counties. As amended, the statute requires the sheriff to send the prisoner to the Department of Correction within five days after sentencing and disposition of all pending charges if no appeal has been taken. If the jail is forced to keep the prisoner, then beginning on the sixth day after sentencing and disposition of all pending charges the Department of Correction must reimburse the county for the cost of housing the prisoner. For the period January through June 1996, the state must reimburse counties at the rate of $14.50 per day per inmate. For the 1996-97 fiscal year, the state must reimburse counties at the rate of $40 per day per inmate.

Collateral Consequences

Criminal history checks. In 1995, the General Assembly expanded the ability of nursing homes, adult care homes, and home care agencies, among others, to obtain criminal record checks on applicants for employment. Chapter 606 (S 1014) will *require* nursing homes, adult care homes, and home care agencies to conduct such record checks. Under new G.S. 131D-40 and 131E-255, the administrator of the home or agency must consider the applicant's criminal record in deciding whether to hire the applicant and may not employ an applicant who refuses to consent to a criminal record check. The new law applies to people who apply for employment with nursing homes or adult care homes on or after January 1, 1997, and to people who apply for employment with home care agencies on or after January 1, 1998.

License forfeiture for failure to pay child support. In 1995 the General Assembly revised several statutes to authorize the suspension, revocation, or restriction of an individual's licensing privileges for failure to pay court-ordered child support. The effective date of these provisions was delayed until different times in 1996. Some of the provisions became effective July 1, 1996—for example, after that date G.S. 50-13.12 allows a judge to revoke hunting, occupational, and certain other licenses. Other provisions do not become effective until December 1, 1996—for example, after that date G.S. 50-13.12 authorizes the revocation of regular and commercial driver's licenses. For a further discussion of the procedures authorizing license revocation, see Cheryl Daniels Howell, Janet Mason, and John Saxon, *1995 Legislation Affecting Family Law*, FAMILY LAW BULLETIN 95/06 (Institute of Government, 1995).

Court Administration

Election of superior court judges by district. Chapter 9 (2d Ex. Sess.) (S 41) provides that superior court judges no longer will be elected statewide. Instead, they will be elected by judicial district. In 1996, superior court judges will be elected by district in partisan elections. Beginning with the 1998 general election, superior court judges will be elected by district in nonpartisan elections. The 1998 elections will be at large using the primary election method. The legislation also ratifies the election of superior court judges by district in 1994.

Chapter 9 also deals with elections held after a superior court vacancy has been filled by appointment. Under current law, a judge appointed to a vacancy in superior court serves until the next election held more than sixty days after the vacancy occurs. That election is for the unexpired portion of the former judge's term, not for a full eight-year term. The legislation changes this rule for superior court districts that either have only one judge or are not covered by Sec. 5 of the 1965 Voting Rights Act. Beginning with the next election in 1996, elections in those districts will be for eight-year terms.

For a more detailed discussion of the changes in superior court elections, see the chapter on courts and civil procedure in *North Carolina Legislation 1996* (Institute of Government, 1996).

New prosecutors, judges, and other positions. Part 22 of Ch. 18 (2d Ex. Sess.) (H 53) creates several new positions in the court system. District attorney

offices were by far the biggest beneficiary of the expansion, receiving 56 new full-time assistant district attorney and 15 new legal assistant positions beginning January 1, 1997. Each prosecutorial district will receive one assistant district attorney position, except that two positions go to districts 3B, 4, 5, 7, 8, 12, 13, 22, 27A, and 29, three positions go to district 10, four positions go to district 18, and five positions go to district 26. The act does not allocate any new assistant district attorney positions to prosecutorial districts 19B and 20, but together those districts will receive four new full-time assistant district attorney positions as part of the transfer of Moore County, discussed below.

The act creates the following additional positions:

- Forty new deputy clerk of court positions, effective January 1, 1997;
- Seven new magistrate positions, effective October 1, 1996 (one each in Northampton, Bertie, Granville, Lincoln, and Henderson County and two in Randolph County);
- Four new special superior court judgeships, effective December 15, 1996 (terms to expire December 2001); and
- Three new district court judgeships, effective the later of December 15, 1996, or 15 days after approval under the 1965 Voting Rights Act (one each in districts 12, 16A, and 23; a fourth new district court judgeship was added to district 19B as part of the transfer of Moore County, discussed below.)

The act also provides that the Administrative Office of the Courts may use a portion of the Indigent Persons' Attorney Fee Fund for 1996-97 to establish up to 11 new assistant public defender positions, effective January 1, 1997.

Transfer of Moore County to district 19B. Chapter 589 (H 233) transfers Moore County to judicial and prosecutorial district 19B. Along with this transfer, the act makes several, quite specific, personnel changes.

The act transfers the superior court judgeship held by James M. Webb, a resident of Moore County, from superior court judicial district 20A to 19B. Judge Webb was the senior resident superior court judge of district 20A, but will not serve in that capacity in district 19B; he may continue to employ a judicial secretary, however. The act also extends by two years the term of Judge Russell G. Walker, Jr., elected in district 19B to an eight-year term expiring in 1998. The act provides that the seat occupied by Judge Walker now expires in 2000, the same year that the other superior court judges in district 19B must run for reelection.

The act, as modified by Sec. 22.8 of Ch. 18 (2d Ex. Sess.) (H 53), transfers one district court judgeship, held by Moore County resident Jayrene Russell Maness, from district court judicial district 20 to 19B. The act also authorizes the governor to appoint an additional district court judge in district 19B for a term beginning January 1, 1997, and expiring in December 1998.

The act increases by four the number of full-time assistant district attorney positions in prosecutorial district 19B but leaves the same number of full-time assistant district attorney positions in district 20. The act allows for the possibility of some reduction in the future. It states that, upon the first vacancy in each district, the number of positions allocated to that district is reduced by one. The act also states that the General Assembly will evaluate by July 1, 1998, whether the case load warrants any further reduction in the number of assistant district attorney positions in district 20.

The changes to the superior court and prosecutorial districts take effect January 4, 1997, or when approved under the 1965 Voting Rights Act, whichever is later. The changes to the district court districts take effect January 1, 1997, or when approved under the 1965 Voting Rights Act, whichever is later.

Costs in criminal cases. Section 22.13 of Ch. 18 (2d Ex. Sess.) (H 53) revises G.S. 7A-304(a) to increase by five dollars the costs chargeable in criminal cases. The increase applies to fees assessed or paid on or after September 1, 1996.

Criminal justice information network. Section 23.3 of Ch. 18 (2d Ex. Sess.) (H 53) creates a governing board for the criminal justice information network. The 15-member board (to be appointed by the governor, General Assembly, attorney general, chief justice, and others) is established within the State Bureau of Investigation. The powers and duties of the board are spelled out in new G.S. Chapter 143, Art. 69.

Criminal procedure study commission. Section 5.1 of Ch. 17 (2d Ex. Sess.) (S 46) creates a study commission with the following broad charge: (1) study all practices and procedures affecting the trial and disposition of criminal prosecutions in the trial

division, including the Criminal Procedure Act, rules of evidence, and other relevant statutes and rules; and (2) devise practices and procedures to reduce delay, simplify pretrial and trial procedure, protect the interests of the state, criminal defendants, and victims, and increase satisfaction with the criminal justice system. The commission must report its findings to the General Assembly by April 1, 1998.

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