The University of North Carolina at Chapel Hill

INSTITUTE of GOVERNMENT

ADMINISTRATION OF JUSTICE

BULLETIN

Number 95/03 September 1995

1995 Legislation Affecting Criminal Law and Procedure

■ John Rubin

This *Administration of Justice Bulletin* discusses legislation relating to criminal law and procedure enacted during the 1995 regular session of the North Carolina General Assembly. No single bill enacted this session had as much of an impact on the state's criminal justice system as the structured sentencing laws passed during the 1993 and 1994 sessions. Still, by the sheer number and range of bills it passed, this General Assembly left its imprint. Over

the course of the session the General Assembly steadily created new criminal laws; toward the end the pace accelerated dramatically. Several significant bills became law, including measures authorizing electronic surveillance by law-enforcement agencies, legalizing the carrying of concealed handguns, and requiring registration of sex offenders.

Each ratified act discussed here is referred to by its chapter number in the session laws and by the number of the original bill—for example, Ch. 246 (S 127). The effective date of each new law is also given. 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 excerpted from chapters in the forthcoming publication *North Carolina Legislation 1995*, written by members of the Institute of Government. That publication, as well as other bulletins mentioned below, may be ordered from the Institute's publications office at (919) 966-4119 or 966-4120.

Criminal Law

Assaults

Changes to misdemeanor assault classifications. Ch. 507 (H 230), Sec. 19.5, effective for offenses committed on or after December 1, 1995, creates a new Class A1 misdemeanor for certain assaults. Class A1 misdemeanors are now the most serious of the misdemeanor classes under structured sentencing. A new subsection (c) of G.S. 14-33 makes the following assaults Class A1 misdemeanors: (1) assault inflicting serious injury; (2) assault with a deadly weapon; (3) assault on a female; (4) assault on a child under 12 years old; (5) assault on a government official; and (6) assault on school bus personnel (this last offense is new and is discussed further below). G.S. 14-34 is amended to make assault by pointing a gun a Class A1 misdemeanor. G.S. 14-33(a) also is amended to reduce simple assault from a Class 1 to Class 2 misdemeanor, leaving assault on a sports official under G.S. 14-33(b) as the only Class 1 misdemeanor assault. The act changes the structured sentencing laws to reflect the creation of Class A1 misdemeanors—for example, the act creates separate punishment ranges for the new class. Changes related to structured sentencing are discussed under the heading "Sentencing" below.

New assault offenses. Ch. 507 (H 230), Sec. 19.5 and 19.6, effective for offenses committed on or after December 1, 1995, creates the following new assault offenses.

1. A person is guilty of *habitual misdemeanor assault* under new G.S. 14-33.2 if the person violates any of the provisions of G.S. 14-33(c) or G.S. 14-34 (discussed above) *and* has five or more prior misdemeanor convictions, two of which were assaults. The offense is punishable as a Class H felony.

2. A person is guilty of an *assault on school bus personnel* under new G.S. 14-33(c)(5) if the person "assaults a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus." The offense is a Class A1 misdemeanor. [This offense was created by Ch. 352 (H 496), but was made into a Class A1 misdemeanor and renumbered by Ch. 507 (H 230).]

3. A person is guilty of *assault with a firearm on a law-enforcement officer* under new G.S. 14-34.5 if the person "commits an assault with a firearm on a law-enforcement officer in the performance of his or her duties." The offense is punishable as a Class E felony. An assault on a law-enforcement officer with a deadly weapon other than a firearm remains a Class F felony under G.S. 14-34.2. Similarly, an assault with a deadly weapon on other government officials covered by G.S. 14-34.2, whether with a firearm or some other deadly weapon, remains a Class F felony.

4. A person may be found guilty of three different types of *assault on emergency personnel* under new G.S. 14-34.6. Under subsection (a), a person is guilty of a Class A1 misdemeanor if the person assaults an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician while such a worker is discharging or attempting to discharge official duties. Under subsection (b), a person is guilty of a Class I felony if the person violates subsection (a) and either inflicts bodily injury or uses a deadly weapon other than a firearm. Under subsection (c), a person is guilty of a Class F felony if the person violates subsection (a) and uses a firearm.

New offenses of abuse, neglect, and exploitation of disabled or elder adults. Ch. 246 (S 127), effective for offenses committed on or after December 1, 1995, adds a new statute to the article on assaults in the General Statutes. New G.S. 14-32.3 creates the following three offenses against disabled or elder

adults who are residing in a domestic setting.

1. A caretaker of a disabled or elder adult residing in a domestic setting is guilty of *abuse* if the caretaker, with malice aforethought, knowingly and willfully: (a) assaults, fails to provide medical or hygienic care, or confines or restrains the disabled or elder adult in a cruel or unsafe condition; and (b) as a result the disabled or elder adult suffers mental or physical injury. The offense is punishable as a Class H felony unless the disabled or elder adult suffers serious injury, in which case the offense is elevated to a Class F felony.

2. A caretaker of a disabled or elder adult residing in a domestic setting is guilty of *neglect* if the caretaker wantonly, recklessly, or with gross carelessness: (a) fails to provide medical or hygienic care or confines or restrains the disabled or elder adult in an unsafe condition; and (b) as a result the disabled or elder adult suffers mental or physical injury. The offense is punishable as a Class I felony unless the disabled or elder adult suffers serious injury, in which case the offense is elevated to a Class G felony.

3. A caretaker of a disabled or elder adult residing in a domestic setting is guilty of *exploitation* if the caretaker knowingly, willfully, and with the intent to permanently deprive the owner of property or money: (a) makes a false representation, abuses a position of trust or fiduciary duty, or engages in coercion; and (b) as a result the disabled or elder adult loses possession of property or money. The offense is punishable as a Class 1 misdemeanor if the value of the property is less than $1,000; the offense is punishable as a Class H felony if the value of the property is more than $1,000.

Weapons

Concealed handgun permits. Ch. 398 (H 90), as amended by Ch. 507 (H 230), Sec. 22.1 and 22.2, and Ch. 509 (S 590), Sec. 135.3(d) and (e), creates a new article allowing the possession of concealed handguns. New Article 54B of Chapter 14 of the General Statutes (G.S. 14-415.10 to 14-415.23), effective December 1, 1995, sets forth the procedures and criteria for the issuance of concealed handgun permits.

1. G.S. 14-415.11 describes the *scope of a concealed handgun permit.* To carry a concealed handgun, a person must have a permit in his or her possession along with valid identification. When approached or addressed by a law-enforcement officer, the person must disclose that he or she is carrying a concealed handgun and has a permit; when requested by an officer, the person must display both the permit and proper identification. The permit is valid throughout the state for four years and authorizes a person to carry a concealed handgun except in the areas prohibited by G.S. 14-415.11(c). That section prohibits the carrying of a concealed handgun in such places as: educational facilities under G.S. 14-269.2; courthouses under G.S. 14-269.4; buildings housing only state or federal offices; individual state and federal offices within other buildings; financial institutions; and premises where the person in legal possession or control posts a notice or states that carrying a concealed handgun is prohibited. G.S. 14-415.11(c) also prohibits a person from carrying a concealed handgun while consuming alcohol or at any time while the person has remaining in his or her system any alcohol or controlled substance (except when the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts).

2. G.S. 14-415.12 describes the *criteria for issuance of a permit.* The sheriff must issue a permit to an applicant who meets all of the criteria in subsection (a) of G.S. 14-415.12. Among other things, the applicant must: be a United States citizen; have been a resident of the state 30 days or longer; be 21 years of age or older; have taken an approved firearms safety and training course; and not be disqualified under subsection (b) of G.S. 14-415.12. Subsection (b) lists eleven grounds for disqualification, any of which require the sheriff to deny an application. Among other things, the applicant must: not be under indictment for or have been adjudicated guilty of a felony; not have been adjudicated guilty of certain misdemeanors; not be an unlawful user of controlled substances; not have been found to be mentally ill or lacking mental capacity; and not have had a prayer for judgment continued for a criminal offense that would disqualify the person from obtaining a permit.

3. G.S. 14-415.13 through 14-415.20 describe the *application, issuance, and revocation process.* To obtain a permit, a person must submit a completed application, a permit fee of $80, a full set of fingerprints administered by the sheriff, a certificate of completion of an approved training course, and a release authorizing disclosure to the sheriff of any records concerning the mental health or capacity of the applicant. The sheriff has up to 90 days to issue or deny a permit except when he or she reasonably believes that an emergency situation exists that may constitute a risk of safety to the applicant or the applicant's family or property. Then the sheriff may issue a temporary, nonrenewable permit for up to 90 days. The cited sections also describe the procedure

for renewing a permit, grounds for revocation or suspension of a permit, and the sheriff's immunity in issuing or denying a permit.

4. G.S. 14-415.21 describes the *criminal penalties* for violations of the new article. A person who has a valid permit, but who is carrying a concealed weapon without a permit or fails to make the disclosures to a law-enforcement officer required by G.S. 14-415.11, is guilty of an infraction for the first offense and is punishable under G.S. 14-3.1 (the general provision concerning infractions). In lieu of paying a fine for a first offense, the person may surrender the permit. Subsequent violations, as well as other violations of the new article, are punishable as Class 2 misdemeanors. Carrying a concealed handgun without having been issued a valid permit is punishable as "carrying a concealed weapon," discussed below.

5. G.S. 14-415.22 and 14-415.23 discuss the statute's *relationship to other laws.* A person authorized to carry a concealed weapon under G.S. 14-269(b), such as law-enforcement officers, need not obtain a permit. Also, counties and municipalities may not adopt any ordinances, rules, or regulations concerning the carrying of a concealed handgun except with respect to local government buildings and parks. There, counties and municipalities may prohibit concealed handguns.

Carrying concealed weapons. As part of Ch. 398 (H 90), which authorizes concealed handgun permits, the General Assembly revised the laws dealing with carrying concealed weapons in general. Amended G.S. 14-269, effective for offenses committed on or after December 1, 1995, distinguishes between carrying a concealed weapon other than a gun and carrying a concealed gun. Carrying the former (except when the person is on his or her own premises) remains a Class 2 misdemeanor. Carrying the latter (except when the person is on his or her own premises *or* the gun is a handgun and the person has a permit) is a Class 2 misdemeanor for the first offense and a Class I felony for each subsequent offense. The amendments to G.S. 14-269 also allow an off-duty, law-enforcement officer to carry a concealed weapon if agency regulations allow the officer to do so; previously an off-duty officer could carry a concealed weapon only in the jurisdiction where assigned.

Handgun purchases. In addition to passing legislation allowing permits for concealed handguns, the General Assembly revised the permitting process for the purchase of handguns and crossbows. Ch. 487 (S 865), effective for permits applied for on or after December 1, 1995, amends G.S. 14-403 to place an expiration date on handgun and crossbow permits: namely, five years from the date of issuance.

The act also amends G.S. 14-404 to require the sheriff to conduct a criminal history background investigation of applicants for handgun or crossbow permits. The amendments prohibit the sheriff from issuing a permit to any person who is under indictment for or has been convicted of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). Previously a person convicted of a felony could obtain a permit if he or she was not prohibited from having a firearm under the Felony Firearms Act (discussed next). The sheriff also may not issue a permit to the following people (in addition to those already disqualified under the statute): illegal aliens; people who have been dishonorably discharged from the armed services; people who have renounced their U.S. citizenship; and people subject to certain restraining orders involving domestic violence (for a discussion of this last category, see "Criminal Law: Domestic Violence" below).

The act repeals Article 53 of Chapter 14 of the General Statutes, which authorized the clerk of court to issue handgun or crossbow permits, thus giving sheriffs the sole responsibility for issuing permits.

Possession of firearm by felon. Ch. 487 (S 865), as amended by Ch. 507 (H 230), Sec. 19.5(k), revises the Felony Firearms Act (G.S. 14-415.1 et seq.). Previously a person convicted of a felony specified in G.S. 14-415.1 was prohibited from possessing a handgun and certain other weapons (except in the person's own home or lawful place of business) within five years from the date of conviction, unconditional discharge from prison, or termination of a suspended sentence, probation, or parole, whichever was later. Violation of this prohibition was a Class H felony.

Amended G.S. 14-415.1 continues to allow felons to possess firearms in their own home or lawful place of business. The amendments make four significant changes, however. First, the act raises the class of offense for violating the prohibition to a Class G felony. Second, the act eliminates the five-year time limit on violations and thus appears to impose a lifetime ban on the possession of a handgun by a felon. Third, the act redefines the prior convictions that cause disentitlement by including: (a) all felony convictions in North Carolina (previously only certain felonies were included); and (b) violations of the criminal laws of other states or of the United States that are substantially similar to a felony in North Carolina and that are punishable where committed by imprisonment of a term exceeding one year

(previously the term had to exceed two years). Fourth, the act includes prior convictions meeting the above definition that occur before, on, or after December 1, 1995. The changes are effective for offenses committed on or after December 1, 1995.

Domestic violence protective orders and firearms. The General Assembly expanded the authority of a court to impose restrictions on the possession of firearms by persons subject to a domestic violence protective order. See "Criminal Law: Domestic Violence" below.

Exception for certain personnel to possess weapons on school grounds. Ch. 49 (H 71), effective April 26, 1995, amends G.S. 14-269.2 to allow additional personnel to possess weapons on school grounds. The amended statute exempts from the weapons ban fire fighters, emergency service personnel, and North Carolina forest service personnel (in addition to the other personnel already listed).

Sex Offenses

New offenses of statutory rape and statutory sexual offense with person 13, 14, or 15 years old. Ch. 281 (S 287), effective for offenses committed on or after December 1, 1995, adds a new statute expanding the definition of statutory rape and statutory sexual offense. New G.S. 14-27.7A makes it a Class B1 felony for a defendant to engage in vaginal intercourse or a sexual act [as defined in G.S. 14-27.1(4)] with another person who is 13, 14, or 15 years old if the defendant is *at least six years older* than the person and is not married to the person. The new statute makes it a Class C felony for a defendant to engage in vaginal intercourse or a sexual act [as defined in G.S. 14-27.1(4)] with another person who is 13, 14, or 15 years old if the defendant is *more than four but less than six years older* than the person and is not married to the person.

New offense of indecent liberties between children. Current G.S. 14-202.1 prohibits a person 16 years of age or older from taking indecent liberties with a child who is at least five years younger than the person. Ch. 494 (H 72), effective for offenses committed on or after October 1, 1995, adds a new statute creating the offense of indecent liberties between children. New G.S. 14-202.2 makes it a Class 1 misdemeanor for a person under 16 years old to take indecent liberties with a child who is at least three years younger than the person. Both the current and new statute employ the same definition of "indecent liberties." (The district court, in its capacity as juvenile court, has exclusive jurisdiction over a person who is under 16 years old and charged with a misdemeanor. New G.S. 14-202.2 does not change this grant of jurisdiction. Thus its effect is only to provide the basis for a delinquency petition in juvenile court.)

Enhanced penalty for first-degree sexual exploitation and promoting prostitution of minor. Ch. 507 (H 230), Sec. 19.5(o) and (p), effective for offenses committed on or after December 1, 1995, amends G.S. 14-190.16(d) and 14-190.18(c) to increase each of the indicated offenses to a Class D felony.

Offenses Involving Minors

In addition to the sexual offenses involving minors discussed under the previous heading, the General Assembly enacted a number of other measures concerning minors.

Sale of tobacco products to minors. Ch. 241 (H 766), effective for offenses committed on or after December 1, 1995, amends G.S. 14-313 to modify the laws regulating the sale of tobacco products to minors. The amended statute makes the following acts Class 2 misdemeanors, subject to the defenses set forth in the statute: (1) sale or distribution of tobacco products (defined as including cigarette wrapping papers) to a person under 18 years of age; (2) failure of a person engaged in the sale of tobacco products to demand proof of age if the person has reasonable grounds to believe that the purchaser is under 18; or (3) sending or assisting a person under 18 to purchase or receive tobacco products. The amended statute makes it an infraction, punishable by a fine up to $100 under G.S. 14-3.1, for a person under 18 to: (1) purchase, receive, or attempt to purchase or receive tobacco products; or (2) present or offer to any person a false proof of age for the purpose of purchasing or receiving tobacco products.

New offense of selling pyrotechnics to person under 16. Ch. 475 (H 280), effective for offenses committed on or after December 1, 1995, amends G.S. 14-410 to make it unlawful to sell certain pyrotechnics to persons under the age of 16. The ban applies to those pyrotechnics described in G.S. 14-414(2), (3), (4)c., (5), and (6). A violation is punishable as a Class 2 misdemeanor (by virtue of G.S. 14-415).

Abortion by minor. Ch. 462 (H 481), effective October 1, 1995, adds a series of new statutes (G.S. 90-21.6 et seq.) concerning abortion by an unemancipated minor. Under new G.S. 90-21.10, any person who intentionally performs an abortion in violation of the new provisions is guilty of a Class 1

misdemeanor. For a further discussion of the new abortion statutes, see Cheryl Daniels Howell, Janet Mason, and John Saxon, *1995 Legislation Affecting Family Law*, FAMILY LAW BULLETIN 95/06 (Institute of Government, 1995).

Drug Offenses

No extraordinary mitigation for drug trafficking conspiracy. Under structured sentencing, a person must receive an active term of imprisonment for certain offenses unless the court makes a finding of extraordinary mitigation; then the court may impose an intermediate punishment. G.S. 15A-1340.13(h) prohibits a finding of extraordinary mitigation for certain offenses, such as drug trafficking. Ch. 375 (S 597), effective for offenses committed on or after December 1, 1995, adds drug trafficking conspiracies under G.S. 90-95(i) to the offenses ineligible for intermediate punishment based on extraordinary mitigation.

Changes to controlled substance schedules. Ch. 186 (H 409), effective October 1, 1995, adds the following substances to the controlled substance schedules in the North Carolina Controlled Substances Act: alpha-ethyltryptamine under G.S. 90-89(c) (Schedule I hallucinogenic substances); aminorex and methcathinone under 90-89(e) (Schedule I stimulants); and levo-alphacetylmethadol under 90-90(b) (Schedule II opiates).

Domestic Violence

Changes to domestic violence laws. Ch. 527 (S 402) makes three main changes to the laws concerning domestic violence.

1. The act amends G.S. 50B-3 to expand the authority of a court entering a *domestic violence protective order*. As of October 1, 1995, the court may prohibit a party from purchasing a firearm for a specific period of time and may include in the order any additional prohibition or requirement that the court considers necessary to protect any party or minor child. As of October 1, 1996 (carefully note the year), the court may order any party the court finds 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.

2. The act adds a new statute, G.S. 14-269.8, to impose *criminal penalties* against a person who purchases or attempts to purchase any gun, rifle, pistol, or other firearm while a domestic violence protective order is in effect prohibiting the person from purchasing a firearm. A violation of the new statute, effective for offenses committed on or after October 1, 1995, is a Class H felony.

3. The act amends G.S. 15A-534.1, effective July 29, 1995, to establish new *pretrial release procedures* in certain cases involving domestic violence. The amendments provide that a judge rather than a magistrate must determine conditions of pretrial release for defendants arrested for: assault on or communicating threats to a spouse or former spouse or a person with whom the defendant lives or has lived as if married; domestic criminal trespass; and a violation of an order entered pursuant to Chapter 50B of the General Statutes. A defendant may be retained in custody for up to 48 hours from arrest without pretrial release conditions being determined. If a judge has not acted within 48 hours, a magistrate then must determine pretrial release conditions pursuant to the requirements of G.S. 15A-534.1.

Handgun purchases by persons subject to restraining order. Ch. 487 (S 865) made a number of changes to the procedures for issuance of handgun permits under G.S. 14-404. See "Criminal Law: Weapons" above. One change is significant in domestic violence cases. Amended G.S. 14-404 prohibits the sheriff from issuing a handgun permit to a person who is subject to a court order that: (1) was issued after a hearing of which the person had actual notice and at which the person had an opportunity to be heard; (2) restrains the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (3) includes a finding that the person represents a credible threat to the physical safety of an intimate partner or child or explicitly prohibits the use, attempted use, or threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury. The act is effective for permits applied for on or after December 1, 1995.

Fraud and Related Offenses

Medicaid fraud. Ch. 317 (S 308), effective for offenses committed on or after December 1, 1995, expands the Medicaid offenses applicable to recipients. New G.S. 108A-64(b1) makes it unlawful for a person knowingly, willingly, and with intent to defraud, to: (1) obtain or attempt to obtain money, services, or any other thing of value to which the

person is not entitled as a Medicaid recipient; or (2) deliberately misuse a Medicaid identification card. Under G.S. 108A-64(c), a violation is punishable as a Class I felony if the value of the assistance wrongfully obtained is more than $400; a violation is punishable as a Class 1 misdemeanor if the value is $400 or less.

Food stamp fraud. Ch. 507 (H 230), Sec. 19.5(n), effective for offenses committed on or after December 1, 1995, amends G.S. 108A-53(a) to lower the threshold amount required for conviction of felony food stamp fraud. A person is guilty of a Class I felony if he or she engages in food stamp fraud in an amount more than $1,000; a person is guilty of a Class 1 misdemeanor when the amount is $1,000 or less. Previously the cutoff was $2,000.

Insurance fraud. Previously G.S. 58-2-161 made it a Class I felony to file a fraudulent statement to procure insurance benefits. Ch. 43 (H 103), effective for violations occurring on or after October 1, 1995, prohibits a person from presenting a fraudulent statement in support of *or* in opposition to a claim for benefits under an insurance policy. The amended statute also increases the punishment for violations to a Class H felony, makes that punishment applicable to solicitation or conspiracy to present a false insurance statement, allows the court as a condition of probation to order the defendant to pay restitution, including the reasonable costs and attorneys fees incurred by the victim in investigating the claim and seeking damages, and expands the civil remedies available to an aggrieved party.

Unauthorized use of wireless telecommunications services. Ch. 425 (S 955), effective for offenses committed on or after December 1, 1995, amends G.S. 14-113.5 and 14-113.6 to broaden the definition of unlawful use of wireless telecommunications services. The amendments also make a violation of G.S. 14-113.5 a Class G felony if it involves five or more unlawful telecommunication devices; other violations remain Class 2 misdemeanors. The act allows the court to order the defendant to make restitution and allows an aggrieved person or entity to bring a civil action for declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit, and attorneys fees as allowed by law.

Wildlife, ABC, and Other Regulatory Offenses

Enhanced penalties for wildlife offenses. As part of the changes accompanying structured sentencing, enacted during the 1993 and 1994 legislative sessions, the General Assembly classified misdemeanor wildlife offenses as Class 1, 2, and 3 misdemeanors. As a result of this change, the fines for such offenses became subject to the general structured sentencing rules on fines (within judge's discretion for Class 1 misdemeanor, up to $1,000 for Class 2 misdemeanor, and up to $200 for Class 3 misdemeanor). Ch. 209 (H 805), effective for offenses committed on or after October 1, 1995, amends G.S. 113-294 and G.S. 113-135(a) to: (1) impose minimum fines for certain offenses (for example, a minimum fine of $250 for unlawfully selling deer and a minimum fine of $2,000 for unlawfully selling bear); (2) increase the class of certain offenses from a Class 3 to a Class 2 misdemeanor (except for unlawfully taking beaver, which is reduced to a Class 3 misdemeanor); (3) provide that any person who violates a wildlife law or rule a second time within three years of a prior wildlife conviction is guilty of a Class 2 misdemeanor; and (4) make it unlawful to violate any rule that allows a handicapped person access by vehicle to game lands.

New fire misdemeanors. During the 1993 and 1994 legislative sessions, the General Assembly repealed certain misdemeanors relating to fires (contained in former G.S. 14-138 and 14-140). Ch. 210 (H 812), effective June 8, 1995, replaces the repealed provisions with two new statutes creating similar misdemeanors. New G.S. 14-138.1 makes it a Class 3 misdemeanor for a person to start a fire upon any grassland, brushland, or woodland and fail to extinguish the fire. New G.S. 14-140.1 makes it a Class 3 misdemeanor for a person to burn any brush, grass, or other material that may endanger or destroy property without having a careful watchman in charge of the burning. The punishment for either offense may include a fine of not less than $10 nor more than $50.

Regulation of malt beverages and unfortified wine by cities and counties. Ch. 366 (H 645), effective July 1, 1995, amends G.S. 18B-300(c) to expand the authority of cities and counties to regulate the possession of malt beverages and unfortified wine in public areas. The amended statute allows cities and counties to regulate or prohibit the possession of: (1) open containers of malt beverages and unfortified wine on public streets by persons who are not occupants of a motor vehicle; (2) open containers of malt beverages and unfortified wine on property owned, occupied, or controlled by the city or county; and (3) any malt beverages and unfortified wine on public streets, alleys, and parking lots temporarily closed to regular traffic for special events. Previously a city or county could only prohibit *consumption* of these beverages on city or county property. [The

possession and consumption of alcoholic beverages in motor vehicles on public streets remains subject to G.S. 18B-401(a). That statute permits a passenger but not the driver to consume malt beverages or unfortified wine. Under revisions to G.S. 20-138.7, however, stricter provisions apply to the driver when a passenger has an open container of alcohol. See "Motor Vehicles: Impaired Driving" below.]

Counterfeit trademarks. Ch. 436 (H 311), effective for offenses committed on or after December 1, 1995, creates new offenses involving counterfeit trademarks. New G.S. 80-11.1 makes it unlawful for any person knowingly and willfully to: (a) use a counterfeit trademark on or in connection with goods or services intended for sale; or (b) have possession, custody, or control of goods intended for sale with a counterfeit trademark. The statute creates three separate classes of offense (Class 2 misdemeanor, Class I felony, and Class H felony) depending on the value of the goods. The statute also makes it a Class H felony for any person knowingly to use a device to produce a counterfeit trademark or have possession of such a device with the intent to produce a counterfeit trademark. The devices are subject to seizure and forfeiture in accordance with Chapter 15, Article 2 of the General Statutes. Law-enforcement agents of the Department of the Secretary of State are granted statewide jurisdiction, with the same power to execute arrest warrants as other law-enforcement officers, for purposes of enforcing the new statute.

Peddlers, itinerant merchants, and specialty market vendors. Ch. 378 (S 987) revises the record-keeping laws governing peddlers, itinerant merchants, and specialty market vendors. Under revised G.S. 105-53, covered persons must keep records of the source of new merchandise in accordance with the specifications set forth in the statute; in lieu of keeping such records, covered persons may produce an affidavit identifying the source of new merchandise. For merchandise acquired on or after December 1, 1995, a violation of these provisions is a Class 1 misdemeanor. For offenses committed on or after July 1, 1996 (carefully note the year), the statute provides that failure to produce the required record or affidavit within a reasonable time after a request by a law-enforcement agent is prima facie evidence of possession of stolen property. Also, after the latter date the agent may take the merchandise into custody as evidence pending production of the requested record or affidavit.

Vital records laws. Ch. 311 (S 632), effective for offenses committed on or after October 1, 1995, creates a new statute, G.S. 130A-26A, making additional acts involving vital records unlawful (such as manufacturing or possessing without lawful authority the seal of the county register of deeds). The new statute makes certain violations Class 1 misdemeanors and others Class I felonies. The act repeals G.S. 130A-26, which previously addressed vital records law violations.

Obstructing airports. Ch. 507 (H 230), Sec. 19.5(m), effective for offenses committed on or after December 1, 1995, creates a new offense of obstructing airports. New G.S. 63-37.1 prohibits any person, other than the owner or operator of an airport, from intentionally obstructing the lawful takeoff and landing operations and patterns of aircraft at a public or private airport. An offense is punishable as a Class 1 misdemeanor.

Pesticide offenses. Ch. 445 (S 388), effective for offenses committed on or after July 18, 1995, amends G.S. 143-443(b) to create additional pesticide offenses. The amended statute makes it a Class 2 misdemeanor (pursuant to G.S. 143-469) for a person to assault, resist, or interfere with a state employee administering the pesticide laws or to apply a pesticide, for compensation, that has not been registered under the pesticide laws. (G.S. 143-469 also allows the North Carolina Pesticide Board to impose a penalty of up to $2,000.)

Miscellaneous Offenses

New offense of continuing criminal enterprise. Ch. 378 (S 987), effective for offenses committed on or after December 1, 1995, adds a new statute creating the offense of continuing criminal enterprise. Under new G.S. 14-7.20, a person is guilty of a continuing criminal enterprise, a Class H felony, if: (1) the person commits a felony in violation of Chapter 14 of the General Statutes; (2) the violation is part of a continuing series of violations of Chapter 14; (3) the continuing series of violations is undertaken by the person in concert with at least five people with respect to whom the person occupies a supervisory or management position or a position as organizer; and (4) the person obtains substantial income or resources from the continuing series of violations. Any person convicted of a continuing criminal enterprise forfeits to the state the profits obtained by the person in the enterprise and any of the person's interest in the enterprise.

Higher fines for violations of local ordinances. As part of the structured sentencing laws, enacted during the 1993 and 1994 legislative sessions, the General Assembly amended G.S. 14-4(a) to classify as a Class 3 misdemeanor any violation of a county or

municipal ordinance except a parking violation (see Ch. 538, Sec. 8 of the 1993 Session Laws). Under G.S. 15A-1340.23(b), Class 3 misdemeanors carry a maximum fine of $200 "[u]nless otherwise provided for a specific offense." The 1993 amendment thus appeared to limit the fine for ordinance violations to $200. Ch. 509 (S 590), Sec. 133.1, effective July 29, 1995, repeals the 1993 provision and leaves in place another provision of the 1993 structured sentencing legislation (Ch. 539, Sec. 9 of the 1993 Session Laws). That section also made ordinance violations Class 3 misdemeanors but it retained the former language of G.S. 14-4(a) allowing up to a $500 fine when the ordinance so provides. The retained language thus overrides the general structured sentencing limitation on fines for Class 3 misdemeanors.

Enhanced penalty for injuring, maiming, or killing law-enforcement animal. Ch. 258 (S 616), effective for offenses committed on or after December 1, 1995, enhances the punishment for seriously injuring, maiming, or killing a law-enforcement animal. Amended G.S. 14-163.1 increases the offense from a Class 1 misdemeanor to a Class I felony.

Repeal of antiquated offenses. Ch. 379 (S 56) repeals certain antiquated offenses, such as counterfeiting Spanish milled dollars. The act is effective July 6, 1995, but does not apply to pending cases.

Motor Vehicles

Impaired Driving

Governor's task force on impaired driving. Ch. 506 (H 353) makes several changes to North Carolina's impaired driving laws based on recommendations of the Governor's task force on impaired driving. The act divides these changes into six parts, which are effective for offenses committed and limited driving privileges issued on or after September 15, 1995.

1. A new subsection (g3) of G.S. 20-179.3 allows a judge to order that an *ignition interlock system* be installed on a defendant's vehicle as a condition of the defendant's receiving a limited driving privilege. The judge may order: (1) that the defendant operate only a designated motor vehicle; (2) that the vehicle be equipped with an ignition interlock system of a type approved by the Division of Motor Vehicles; and (3) that the defendant personally activate the ignition interlock system before driving the vehicle. These provisions do not apply to a vehicle that meets all of the following requirements: (1) the vehicle is owned by the defendant's employer; (2) the vehicle is operated by the defendant solely for work-related purposes; and (3) the vehicle's owner has filed with the court a document authorizing the defendant to drive the vehicle for work-related purposes.

2. Amendments to G.S. 20-179.3(b) require a driver to have a *substance abuse assessment* before obtaining a limited driving privilege.

3. Amended G.S. 20-138.3 tightens the laws concerning *drivers less than 21 years of age*. The amendments make it unlawful for a person less than 21 years of age to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while having alcohol or a controlled substance in his or her system (other than a controlled substance lawfully obtained and taken in therapeutically appropriate amounts). Previously the statute applied only to drivers who were less than 18 years of age. A conviction now results in a one-year license revocation [by virtue of amendments to G.S. 20-13.2(d)]; but new subsection (d) of G.S. 20-138.3 provides that a person 18, 19, or 20 years old on the date of the offense may obtain a limited driving privilege under the conditions stated there. The person also is subject to the new certificate-of-completion requirements for restoration of a revoked license, discussed below. As before, G.S. 20-138.3 provides that an offense is not a lesser offense of impaired driving, but if both offenses arise out of the same occurrence the aggregate punishment may not exceed the maximum for impaired driving.

4. A new statute, G.S. 20-138.7, imposes stricter rules on driving with an *open container of alcohol* in the vehicle. The new statute prohibits a person from driving a motor vehicle while there is an open container of alcohol in the passenger area of the vehicle (including beer and unfortified wine) *and* the driver is consuming alcohol or has alcohol remaining in his or her body. (G.S. 18B-401 also prohibits open containers of spirituous liquor, fortified wine, and mixed beverages in the passenger area whether or not the driver has been drinking.) A first offense under the new statute is punishable as a Class 3 misdemeanor; each subsequent offense is punishable as a Class 2 misdemeanor with a maximum fine of $1,000. A person's license is revoked for six months for a second offense and one year for a third or subsequent offense (by virtue of amendments to G.S. 20-17 and 20-19); but subsection (h) of new G.S. 20-138.7 allows the person to obtain a limited driving privilege. The new statute also provides as follows: (1) the odor of alcohol on the driver's breath is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body except when the driver was offered an alcohol screening test or chemical analysis

and refused; (2) alcohol screening tests such as an alco-sensor test are admissible in court and administrative proceedings if properly performed with a device approved by the Commission for Health Services; (3) an offense under the new statute is subject to the implied-consent provisions of G.S. 20-16.2, but refusal to submit to an alcohol screening test is not a basis for revocation of the person's license; and (4) an offense under the new statute is not a lesser offense of impaired driving but if both offenses arise out of the same occurrence the aggregate punishment may not exceed the maximum for impaired driving.

5. G.S. 15A-401(b) specifies the circumstances in which officers may make *warrantless arrests* for misdemeanors committed outside their presence. Amendments to that statute add violations of G.S. 20-138.1 (impaired driving) and G.S. 20-138.2 (impaired driving in a commercial vehicle) to the misdemeanors committed outside of an officer's presence for which an arrest warrant is not required.

6. The following amendments concern *blood alcohol levels*: (1) G.S. 20-179(d)(1) was amended to reduce from 0.20 to 0.16 the alcohol level required for the aggravating factor of "gross impairment"; (2) G.S. 20-179(e)(1) was amended to reduce from 0.11 to 0.09 the alcohol level necessary for the mitigating factor of "slight impairment"; and (3) G.S. 75-10(b1) was amended to reduce from 0.10 to 0.08 the alcohol level for the offense of operating a motor boat or motor vessel while impaired.

Notification of rights by charging or arresting officer. Ch. 163 (H 134), effective June 5, 1995, revises the rules on administering a chemical analysis to determine whether a person is impaired. Under G.S. 20-16.2, the chemical analyst must advise the person to be tested of his or her rights before administering a chemical analysis. Previously the statute prohibited the charging or arresting officer from both advising the person of his or her rights *and* conducting the chemical analysis unless the analysis was of the person's *blood*. Amended G.S. 20-16.2 allows the charging or arresting officer, if authorized as a chemical analyst, to give the notice of rights *and* administer the chemical analysis, regardless of whether the analysis is of the person's blood or breath. If the person refuses to submit to the chemical analysis, the charging or arresting officer alone may execute an affidavit stating that the person has so refused (resulting in revocation of the person's license to drive for one year).

Restoration of driver's license. Ch. 496 (H 458), effective for offenses committed on or after January 1, 1996, adds two statutes placing new conditions on the restoration of a driver's license after conviction of certain offenses. The first statute, G.S. 20-17.6, requires a person to furnish the Division of Motor Vehicles a "certificate of completion" as a condition of having his or her license restored. The new statute covers the following offenses: (1) impaired driving (G.S. 20-138.1); (2) impaired driving in a commercial vehicle (G.S. 20-138.2); and (3) driving while less than 21 years old after consuming alcohol or drugs (G.S. 20-138.3). A person subject to the new statute is not eligible for a limited driving privilege if the period of revocation has expired and the person's license remains revoked solely because the person has not obtained the required certificate. To obtain a certificate of completion, the person must meet the following two requirements: obtain a substance abuse assessment from an entity authorized by the Department of Human Resources to conduct assessments *and* complete an alcohol and drug education traffic school (ADET school) or a substance abuse treatment program.

The other new statute, G.S. 122C-142.1, describes the second requirement for obtaining a certificate of completion. It states that a person must attend a substance abuse treatment program if any of the following apply: (1) the person had an alcohol concentration of 0.15 or more at any relevant time after driving; (2) the person has a prior conviction of an offense involving impaired driving; or (3) the substance abuse assessment identifies a substance abuse disability. In all other cases the person must attend an ADET school.

The act also amends the sentencing provisions in impaired driving cases. Amended G.S. 20-179 allows (but does not require) a court to impose as a condition of probation that a defendant obtain a substance abuse assessment and the education or treatment required by new G.S. 20-17.6.

Other Motor Vehicle Changes

Enhanced penalty for failure to give way. Ch. 283 (H 328), effective for offenses committed on or after December 1, 1995, amends G.S. 20-149(b) to increase the penalties for failing to give way to an overtaking vehicle. Failure to give way while being lawfully overtaken by another vehicle on audible signal is now punishable as: (1) a Class 1 misdemeanor when the failure is the proximate result of a collision resulting in serious bodily injury; (2) a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage;

and (3) an infraction in all other cases.

Window tinting laws. Ch. 473 (H 120), effective November 1, 1995, rewrites the rules governing the tinting of windows, contained in G.S. 20-127. The amended statute contains several restrictions on window tinting (concerning such matters as light transmission, light reflection, and the color of tinted film) as well as exceptions for several types of vehicles (such as excursion passenger vehicles, limousines, and law-enforcement vehicles). It is a Class 2 misdemeanor (pursuant to G.S. 20-176) to apply tinting in violation of the restrictions or drive a vehicle that has a window in violation of the restrictions. It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge. The defendant must present a certificate from the Division of Motor Vehicles or the Highway Patrol to this effect.

Reportable accident limit. Ch. 191 (S 154), effective for accidents and offenses occurring on or after January 1, 1996, amends G.S. 20-4.01 and 20-166.1 to define a "reportable accident" as an accident or collision involving a motor vehicle that results in death or injury of a human being or total property damage of $1,000 or more. Previously an accident had to be reported to a law-enforcement officer in cases of death, injury, or property damage of $500 or more. A violation of this requirement is a Class 2 misdemeanor (pursuant to G.S. 20-176). The act also reduces from a Class 1 to a Class 2 misdemeanor a person's failure to comply with reporting requirements after colliding with a parked or unattended vehicle.

Penalties for racing. Ch. 163 (H 134), effective for offenses committed on or after July 1, 1995, revises G.S. 20-141.3 by switching the punishments for prearranged racing and willful racing that is not prearranged. Prearranged racing is now a Class 1 misdemeanor; willful racing is now a Class 2 misdemeanor.

Juvenile Law

Psychiatric or psychological treatment of parents. Ch. 328 (S 379), effective for juvenile petitions filed on or after October 1, 1995, amends G.S. 7A-564 and G.S. 7A-650 to expand the court's authority to order a parent to obtain treatment when a juvenile is adjudicated delinquent, undisciplined, abused, neglected, or dependent. Previously the court could condition custody or placement of the juvenile with the parent on the parent's obtaining treatment. That provision is retained. The new law allows the court—at the dispositional hearing or a subsequent hearing and upon finding that it is in the juvenile's best interest—to order the parent to undergo psychiatric, psychological, or other treatment or counseling directed at remedying the behaviors or conditions that contributed to the juvenile's adjudication or to the court's decision to remove the juvenile from the parent's custody.

The act also deletes the provisions for a special petition, summons, and hearing, required under former law before the court could order a parent to receive treatment as a condition of obtaining custody of the juvenile. Instead, the initial summons in a juvenile proceeding (to be served on the juvenile, parent, and guardian) must include notice that a dispositional or subsequent order may remove the juvenile from the custody of the parent, guardian, or custodian, may require the juvenile and parent to undergo treatment, and may require the parent to pay for any treatment.

As under former law, if the court makes treatment a condition of the parent's having custody of the juvenile and finds that the parent is unable to pay for the treatment, the court may charge the cost to the county. If the court directly orders the parent to undergo treatment and finds that the parent is unable to pay, the court may require only that the parent receive treatment currently available from the area mental health program.

Physical custody of 16 or 17 year-old without court order. Ch. 391 (H 733), effective October 1, 1995, amends G.S. 7A-571 and 7A-572 to authorize a law-enforcement officer to take physical custody of a 16 or 17 year-old, without a court order, if: (1) the juvenile's parent, guardian, or custodian requests the officer to do so; (2) there are reasonable grounds to believe the juvenile is beyond the disciplinary control of the parent, guardian, or custodian; and (3) there are reasonable grounds to believe that the juvenile has been absent from the home without permission for 48 consecutive hours. In most cases the officer must either return the juvenile to the juvenile's parent, guardian, or custodian or notify that person that the juvenile has been taken into custody. If, however, the officer has reasonable grounds to believe the juvenile is abused, neglected, or dependent *and* would be injured if returned to the custody of the parent, guardian, or custodian, the officer must proceed as in other cases of temporary custody of juveniles who are suspected of being abused, neglected, or dependent.

For other legislation affecting the abuse, neglect,

and dependency aspects of juvenile law, see Janet Mason and John Saxon, *1995 Legislation: Social Services, Juvenile, Aging, and Related Laws*, SOCIAL SERVICES LAW BULLETIN No. 22 (Institute of Government, 1995).

Criminal Procedure

Arrest, Search, and Investigation

Authorization for electronic surveillance. Federal law regulates the use of electronic, mechanical, and other devices to intercept communications without the consent of one of the parties to the communication. State and local law-enforcement agencies may engage in such "electronic surveillance" to the extent permitted by federal law but only if state law also authorizes it. When state law does not authorize such conduct, federal law prohibits it. Previously North Carolina did not allow electronic surveillance. Ch. 407 (S 896), effective December 1, 1995, reverses that position. New Article 16 of Chapter 15A of the General Statutes creates a procedure for state and local law-enforcement agencies to obtain a court order for electronic surveillance and establishes stiff penalties for activities in violation of the article. The key provisions of the act, codified at 15A-286 through 15A-298, are discussed below. For a further discussion of federal law, codified at 18 U.S.C. 2510 through 2521, see ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 83-84 (1992).

1. G.S. 15A-286 contains a long list of *definitions of terms* establishing the scope of the new article. Thus, unless otherwise provided, "wire, oral, and electronic communications" as defined in the article may be intercepted only with the consent of one of the parties to the communication or pursuant to a court order. [G.S. 15A-286(21) states that the term "wire communication" does not include certain portions of cordless telephone communications, thus seeming to permit the interception of those communications without the consent of one of the parties or a court order. Federal law, however, does not permit the interception of cordless telephone communications, apparently rendering this provision void.]

2. G.S. 15A-287 through 15A-289 and 15A-296 contain *criminal and civil penalties* for violation of the article. For example, unless otherwise provided, it is a Class H felony for a person to willfully intercept or endeavor to intercept any wire, oral, or electronic communication as defined in the article. A person has a civil cause of action if his or her communications have been intercepted, disclosed, or used in violation of the article. Damages include: liquidated damages of $100 a day for each day of violation or $1,000, whichever is higher; actual damages in excess of the amount of liquidated damages; punitive damages; and reasonable attorneys fees and costs.

3. G.S. 15A-290 through 15A-292 establish the *application procedure* for an electronic surveillance order. G.S. 15A-290 lists the offenses for which such orders may be granted—for example, drug trafficking, murder and certain other violent crimes, certain offenses involving minors, and offenses involving weapons of mass death or destruction. The section does not include all felonies. G.S. 15A-291 provides that only the North Carolina Attorney General may apply for an order authorizing a state or local law-enforcement agency to engage in electronic surveillance. The Attorney General must apply to a judicial review panel composed of judges appointed by the Chief Justice of the North Carolina Supreme Court. Individual law-enforcement agencies may not apply for electronic surveillance orders; nor may judges who are not on the panel issue such orders. G.S. 15A-292 details the procedure by which state and local law-enforcement agencies may request the Attorney General to apply for an electronic surveillance order.

4. G.S. 15A-293 describes the *issuance and implementation of electronic surveillance orders*. The judicial review panel may enter an ex parte order authorizing the interception of wire, oral, or electronic communications if the panel finds the four facts specified in the section (relating to probable cause and the inadequacy of normal investigative procedures). The order may last no longer than necessary and in no event longer than 30 days; extensions of up to 15 days may be granted, however. The contents of any intercepted communication must be recorded and retained for 10 years; failure to do so may be punished as for contempt.

5. G.S. 15A-294 discusses the *disclosure and use of intercepted communications*. Within 90 days after the filing of an application for an order or the expiration of the order, the issuing judicial review panel must cause an inventory to be served on the people named in the application or order. The inventory must indicate the fact of the application or order, the period of authorized interception, and whether wire, oral, or electronic communications were intercepted. The issuing judicial review panel may, on motion of the affected person, make available for inspection such portions of the intercepted communications as the panel determines to be required by law or in the interest of justice. The contents of any intercepted wire, oral, or electronic

communication may not be received in evidence in any North Carolina court unless each party to the proceeding is furnished with a copy of the order and accompanying application at least 20 working days before the proceeding. An aggrieved party may move to suppress the communication on the grounds set forth in the statute.

Warrantless arrests. G.S. 15A-401(b) specifies the circumstances in which an officer may arrest a person without a warrant for a misdemeanor committed outside the presence of the officer. As part of the recommendations of the Governor's task force on impaired driving, implemented by Ch. 506 (H 353), G.S. 15A-401(b) was amended to add violations of G.S. 20-138.1 (impaired driving) and G.S. 20-138.2 (impaired driving in a commercial vehicle) to the misdemeanors committed outside an officer's presence for which an arrest warrant is not required. The change is effective for offenses committed on or after September 15, 1995.

Jurisdiction of city law-enforcement officers. Ch. 206 (H 634), effective December 1, 1995, amends G.S. 15A-402(c) to expand the territorial jurisdiction of city law-enforcement officers. The amended statute allows a city law-enforcement officer to: (1) transport a person in custody to or from any place within North Carolina for the purpose of attending criminal court proceedings; and (2) while engaged in transportation for such a purpose arrest a person for an offense occurring in connection with the transportation.

Pretrial, Trial, and Appellate Procedure

Proposed constitutional amendment on victims' rights. Ch. 438 (S 6) proposes a constitutional amendment to provide victims of crime with certain rights, including the right to: (1) be informed of and be present at court proceedings involving the accused; (2) be heard at sentencing and at other times considered appropriate by the court; (3) receive restitution as allowed by law; (4) receive general information on the criminal justice system; (5) receive information about the final disposition of the case; (6) receive notification of the release or escape of the accused; (7) present their views to the Governor or agency considering release of the accused; and (8) confer with the prosecution. The proposed amendment will be on the ballot at the November 1996 general election and will become effective, if adopted, upon certification by the State Board of Elections.

Another victims rights initiative appears in Ch. 507 (H 230), Sec. 19.3. That act amends G.S. 147-16 to require the Governor to provide notice of any sentence commutation to the following persons: the victim of the crime for which the sentence was imposed; the victim's spouse, children, and parents; other members of the victim's family who request in writing to be notified; and the Joint Legislative Corrections Oversight Committee. The change is effective July 28, 1995.

Secured bonds. The General Assembly passed three bills concerning surety bonds: Ch. 290 (H 851); Ch. 448 (S 792); and Ch. 503 (S 459). The bills made three types of changes.

1. *Cash bonds* were the subject of two of the bills. Ch. 290, the first of the bills, amended G.S. 15A-531(1) to provide that a surety bond shall be considered the same as a cash deposit. Ch. 503 changed the new language, however. The latter bill provides that a bail bond for which the "surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer" shall be considered the same as a cash deposit. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit. The bill also states that cash bonds set in child support contempt proceedings shall not be satisfied by other than the deposit of cash. The changes made by Ch. 503 are effective July 28, 1995.

2. All three bills revised the procedures for *forfeiture of bail bonds* under G.S. 15A-544. Together they made the following changes (the lettering used here corresponds to the subsections of G.S. 15A-544):

(a) The bond must include the obligor's mailing address, street address, and telephone number for service of process;

(b) Orders of forfeiture are to be served on each obligor by the clerk of court by certified mail, return receipt requested;

(c) Within 60 days of service or at the first presentment of the forfeiture calendar after the 60-day period, the principal or surety may move to strike the order of forfeiture on the ground that it was impossible for the principal to appear or the failure to appear was not the principal's fault; when such a showing is made, the court must set aside the order of forfeiture; when such a showing is not made, the court must enter judgment for the state for the amount of the bail and cost of the proceeding except as provided in the next subsection;

(c1) Within the above time period, the surety may move to strike an order of forfeiture on the ground that the principal was incarcerated in North Carolina and unable to appear; when such a showing is made, the court must set aside the forfeiture order;

(d) The clerk of court must prepare a forfeiture roll once a month when court is in session and must

include any motions to strike forfeiture orders; the district attorney is under a duty to present the forfeiture calendar to the court but may designate the county school board attorney to present the calendar;

(e) Within 90 days of entry of judgment on a forfeiture order, the principal or surety may file a verified petition, to be served on the county school board at least three working days before the hearing, seeking to remit the judgment in whole or in part; the clerk of court must place the petition on the next forfeiture calendar and notify the petitioner, district attorney, and school board attorney of the hearing; the court may strike the forfeiture if it appears that justice so requires and must strike the forfeiture (upon payment of costs) if the principal is surrendered by the surety and incarcerated in North Carolina within 90 days of entry of judgment *or* the principal is incarcerated or served an order for arrest within 90 days of entry of judgment and placed on a new bond or released by the court;

(g) If a levy of execution remains unsatisfied for 10 days, the sheriff must notify the clerks and magistrates in the prosecutorial district, and the delinquent obligor may not become surety as long as the judgment remains unsatisfied.

Subsection (c1) is effective July 28, 1995; the remaining changes take effect December 1, 1995.

3. Ch. 290, effective June 19, 1995, adds a new statute, 15A-547.1, providing for the *remission of a bail bond* if the defendant is convicted and sentenced to a community or intermediate punishment and no appeal is pending. In those circumstances, the court must remit the bail bond to the obligor and may not require that a bail bond be posted while the defendant serves his or her sentence.

Authority to request drug trafficking investigative grand jury. Previously a district attorney could request that a special grand jury be convened to investigate the commission of certain drug offenses. Ch. 362 (S 325), effective December 1, 1995, amends G.S. 15A-622(h) to authorize a district attorney's designated assistant or a special prosecutor in the Attorney General's office to request that a special grand jury be convened.

Preference for local competency examination. Ch. 299 (H 386), effective for cases pending after October 1, 1995, amends G.S. 15A-1002(b) to require judges in felony cases to make the following finding before sending a defendant to a state facility for a competency examination. If a judge orders a defendant charged with a felony to a state facility for examination and the defendant has not first had a local examination, the judge must find that examination at the state facility is more appropriate to determine the defendant's capacity to proceed. (In cases in which the defendant is charged with a misdemeanor, the court may only order a competency examination at a state facility after a local examination is conducted.)

Venue of involuntary commitment hearing for persons found not guilty by reason of insanity. Ch. 140 (S 312), effective June 1, 1995, alters the venue rules for involuntary commitment hearings for persons found not guilty by reason of insanity. Amended G.S. 122C-268.1(b) provides that upon motion of a district attorney who has elected to represent the state's interest at the commitment hearing, the hearing shall be held in the county in which the person was found not guilty by reason of insanity rather than in the county in which the person is confined.

Court of appeals jurisdiction over appeals involving life sentences. Formerly a person had an appeal of right to the North Carolina Supreme Court when the person was convicted of first-degree murder and sentenced to life imprisonment or death. Ch. 204 (S 832), effective for cases tried on or after December 1, 1995, amends G.S. 7A-27 to grant jurisdiction over appeals involving life sentences to the North Carolina Court of Appeals.

Lawsuits by indigent prisoners. Under G.S. 1-110, a person may sue as an indigent when the person submits an affidavit to a superior court judge, district court judge, or clerk of court showing that he or she is unable to advance the required court costs and meets certain other income-related criteria. Ch. 102 (S 41), effective for actions filed on or after May 25, 1995, amends G.S. 1-110 with respect to lawsuits by indigent persons incarcerated in the Department of Correction. If the inmate is not represented by counsel, he or she must submit the complaint along with the motion to proceed as an indigent to a superior court judge. If the judge determines that the complaint is frivolous, he or she may dismiss the case.

Domestic violence and pretrial release. The General Assembly revised pretrial release procedures in cases involving certain domestic violence offenses. See "Criminal Law: Domestic Violence" above.

Sentencing

Many punishments for specific offenses were changed this session. Those changes are discussed above under "Criminal Law." General changes to North Carolina's sentencing laws are discussed below.

Revised felony sentencing grid. Ch. 507 (H 230), Sec. 19.5, effective for offenses committed on or after December 1, 1995, amends the felony sentencing

grid in G.S. 15A-1340.17(c). The grid is shown as Table 1 at the end of this bulletin, with new material underlined and deleted material stricken through. The revisions make an active punishment possible for a Class H felon in prior record levels I or II. They also raise the ranges of the minimum term of imprisonment for felonies in Class B2, C and D.

New class of misdemeanors. Ch. 507 (H 230), Sec. 19.5, effective for offenses committed on or after December 1, 1995, creates a new misdemeanor Class A1 with more severe punishments than the present highest class (Class 1). The act revises the misdemeanor sentencing grid in G.S. 15A-1340.23, which is shown with new material underlined in Table 2 at the end of this bulletin. For a Class A1 misdemeanor, the judge will have the choice of an active, intermediate, or community punishment regardless of the offender's prior conviction level. Active terms may range from 1 to 150 days depending on prior convictions.

The act assigns several assaults to the new misdemeanor class. See "Criminal Law: Assaults" above. The act also revises the following structured sentencing provisions, effective for offenses committed on or after December 1, 1995, to treat Class A1 and Class 1 misdemeanors alike: (1) G.S. 15A-1332(c) is amended to include a Class A1 misdemeanor as a charge for which a defendant may be sent to the Department of Correction for a presentence diagnostic investigation; (2) G.S. 15A-1340.14(b) is amended to assign one point to a Class A1 misdemeanor for purposes of computing a felon's prior record level; (3) G.S. 15A-1340.23(b) is amended to provide that fines for a Class A1 misdemeanor are in the discretion of the sentencing judge without any specified limit; (4) G.S. 15A-1343.1 is amended to make Class A1 misdemeanants eligible for sentencing to IMPACT or "boot camp" if they meet the other eligibility requirements (additional changes in the eligibility criteria for IMPACT are discussed further below).

Proposed constitutional amendment to authorize additional punishments and eliminate right to reject probation. Article XI, Section 1 of the North Carolina Constitution authorizes the following punishments in a criminal case: death, imprisonment, fines, removal from office, and disqualification to hold office. Ch. 429 (S 4) proposes a constitutional amendment, to be submitted to the voters at the November 1996 general election, authorizing the following additional punishments: "suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, [and] work programs." The bill also would repeal G.S. 15A-1341(c) if the constitutional amendment is approved. Under that statute, a person who is placed on probation may elect to serve his or her suspended sentence of imprisonment in lieu of remaining on probation. Together the constitutional amendment and repeal of the statute would allow a court to impose probation and other measures with or without the consent of the defendant. If the voters approve the constitutional amendment, G.S. 15A-1341(c) would be repealed effective January 1, 1997.

Repeal of prison cap and revisions to parole eligibility. Ch. 324 (H 229), Sec. 19.9, makes two sets of revisions, with different effective dates, to G.S. 148-4.1. The first set of amendments, effective June 26, 1995, adds a new subsection (a1) to G.S. 148-4.1, requiring the Department of Correction (DOC) to secure the necessary prison space to house any violent or habitual felon for the full active sentence imposed by the court. Violent offenses are defined as first- or second-degree murder, voluntary manslaughter, first- or second-degree rape or sexual offense, any sexual offense involving a minor, robbery, kidnapping, assault, and attempt, solicitation, or conspiracy to commit any of those offenses. The first set of amendments also raises the prison cap from 24,500 to 27,500 and provides that the Post-Release Supervision and Parole Commission (Commission), in granting parole to comply with the cap, may not parole any prisoner convicted of a violent offense, drug trafficking, and certain other offenses. (Most of these exclusions existed previously.)

The second set of amendments, effective January 1, 1996, repeals the prison cap and provisions related to it [G.S. 148-4.1(c1) through (g)]. Under contemporaneous amendments to G.S. 148-4.1(a), the DOC may direct the Commission to parole a sufficient number of prisoners when "necessary to reduce the prison population to a more manageable level or to meet the State's obligations under law." Amended G.S. 148-4.1(a) also continues to prohibit the Commission, in granting parole to reduce the prison population, from paroling prisoners convicted of violent offenses, drug trafficking, and certain other offenses.

Under G.S. 148-4.1(g1), which remains in effect, the Commission may continue to parole "nonviolent inmates who would not otherwise be eligible for parole instead of paroling violent inmates who are eligible for parole." This last section does not apply to prisoners sentenced under structured sentencing.

Community penalties. Previously community penalties programs were authorized to prepare community penalties plans for presentation to the sentencing judge by the defendant's attorney. Ch. 324

(H 229), Sec. 21.9(e), effective July 1, 1995, amends G.S. 7A-773 to allow community penalties programs to prepare such plans at the request of the sentencing judge as well.

Criteria for sentencing to IMPACT. Ch. 446 (S 404), effective October 1, 1995, amends G.S. 15A-1343.1 to expand the group of people eligible to be sentenced to IMPACT or "boot camp." The amended statute allows a court to sentence a person to IMPACT who is between the ages of 16 and 30 (instead of between 16 and 25) and removes the disqualification for people who have served active sentences.

Collateral Consequences

Drug Offenses

Controlled substance excise tax. In 1989 the General Assembly passed legislation levying an excise tax on persons who possess controlled substances in violation of North Carolina law. Ch. 340 (H 123), effective for substances acquired on or after October 1, 1995, makes several changes to that law (set forth in Chapter 105, Article 2D of the General Statutes). The act: (1) repeals the criminal penalties for failure to pay the tax (the act contains a savings clause for offenses committed before the act's effective date); (2) eliminates the tax on counterfeit controlled substances and introduces a new tax schedule for "low-street-value drugs" and marijuana stems and stalks; (3) reduces the penalty for failure to pay the tax from 100 to 50 percent of the tax due; and (4) provides that excise taxes are payable by any person who actually *or* constructively possesses more than a threshold amount of the controlled substance. The tax continues to apply only to persons who illegally possess controlled substances; the act exempts controlled substances in possession of a person authorized by law to possess the substance.

Drug nuisance forfeitures. Ch. 528 (S 783), effective for nuisances existing on or after December 1, 1995, adds a new statute to provide for the forfeiture of real property involving "drug nuisances." New G.S. 19-6.1 provides that when a preliminary injunction, a permanent injunction, or an order of abatement is issued under Chapter 19, Article 1 of the General Statutes, and the nuisance includes at least two prior occurrences within five years of the illegal possession or sale of controlled substances as defined in G.S. 90-87(17) (essentially, opium, cocaine, or its derivatives), the real property on which the nuisance exists is subject to forfeiture. The Attorney General, a district attorney, counties, or municipalities may obtain an order of forfeiture in a nuisance action if all the owners of the property are defendants and the court finds the facts required under the statute. Forfeited property goes to the school board of the county where the property is located.

Eviction of persons engaged in drug-related criminal activity. Ch. 419 (S 558), effective for acts committed on or after October 1, 1995, adds a new Article 7 to Chapter 42 of the General Statutes, setting out an expedited eviction procedure for people engaged in drug-related criminal activity and other criminal activities that threaten other residents or employees of the landlord. For a discussion of these procedures, see Joan G. Brannon, *1995 Small Claims and Miscellaneous Legislation of Interest to Magistrates*, ADMINISTRATION OF JUSTICE BULLETIN 95/04 (Institute of Government, 1995).

Registration and Record Checks

Sex offender registry. Ch. 545 (S 53) creates a new article requiring persons convicted of certain sex offenses to register with the sheriff in the county where they reside. New Article 27A of Chapter 14 of the General Statutes (G.S. 14-208.5 et seq.) applies to persons convicted of rape, sexual offense, and certain other sex offenses. A person who has a reportable conviction must register with the sheriff in the county where he or she resides within 10 days after release from a penal institution or arrival in the county; if no active term of imprisonment was imposed, the person must register immediately upon conviction. The person must provide the sheriff with his or her full name, birth date, physical description, drivers license number, home address, type of offense committed, current photograph, and fingerprints. The penal institution (or, in cases in which no active imprisonment is imposed, the court) must notify the person of the registration requirements in accordance with the procedures in the statute.

Members of the public may obtain information concerning an individual's registration status by contacting the sheriff. Members of the public also may review the registry, which is designated as a public record, and obtain a copy of an individual's registration information except the individual's photograph. The sheriff is authorized, upon written request, to provide a copy of the entire registry to any organization that uses volunteers or employees to work with children or disabled or elderly persons.

Failure to register as required by the new article is

a Class 3 misdemeanor for the first violation and a Class I felony for each subsequent violation. Registration must be maintained for ten years. A person may apply to the superior court in the county where the person resides for exemption from the registration requirements. The act is effective January 1, 1996, and applies to all persons convicted or released from a penal institution on or after that date.

Criminal history checks. The General Assembly enacted several measures expanding criminal history checks at certain facilities and requiring determination of the fitness of employees to work in those facilities.

1. Ch. 373 (S 223), effective July 1, 1995, adds a new statute (G.S. 115C-332) requiring *local boards of education* to adopt policies on whether and under what circumstances to check the criminal history of persons who apply for public school positions (as employees or certain independent contractors). The local board must determine whether the applicant is suitable for employment in light of the criminal history it receives and must provide any criminal history it receives to the State Board of Education for review of the person's certificate or license.

2. Ch. 507 (H 230), Sec. 23.25, as amended by Ch. 542 (H 898), Sec. 25.2, adds a new statute (G.S. 110-90.2) requiring the Department of Human Resources to check the criminal history of all *child day care providers* and determine their fitness to have responsibility for children in light of their record. The act takes effect January 1, 1996, and applies to all child day care providers providing child day care as of that date and all new child day care providers.

3. Ch. 507 (H 230), Sec. 23.26, adds a new statute (G.S. 131D-10.3A) requiring the Department of Human Resources to check the criminal history of all *foster parents*, to recheck criminal history annually upon relicensure, and to determine whether the foster parent is fit to have responsibility for children in light of the check. The act takes effect January 1, 1996, and applies to foster parents providing care on or after that date and to foster parents applying for issuance or renewal of licenses on or after that date.

4. Ch. 453 (H 807), effective October 1, 1995, amends G.S. 114-19.3 to allow additional *caregivers* to obtain criminal record checks on employees and applicants for employment who consent to such checks. The amended statute authorizes criminal record checks by, among others, hospitals, nursing homes, area mental health agencies, home care agencies, child placing agencies, child day care facilities, and any other organization that provides direct care or services to children, the sick, disabled persons, or the elderly.

Education, Employment, and Licensing

Suspending and expelling students. Ch. 293 (S 51) amends G.S. 115C-391 to allow a local board of education to suspend for one year any student who brings onto school property a weapon defined in G.S. 14-269.2(b) and (g) (essentially, firearms and explosives). Ch. 386 (S 26) amends G.S. 115C-391 to allow a local board of education to expel a student 14 years of age or older whose behavior indicates that the student's continued attendance constitutes a clear threat to the safety of other students or employees. Previously a local board could expel the student only if he or she had been convicted of a felony and posed a clear threat to others at the school. The amendments concerning suspension take effect August 1, 1995, and apply to any student who brings a weapon onto school property on or after that date; the amendments concerning expulsion apply to acts committed on or after September 1, 1995.

Forfeiture of licenses for failure to pay child support. Ch. 538 (H 168) revises several statutes to impose additional sanctions for the failure to pay court-ordered child support. If an individual fails to pay court-ordered child support, the individual's occupational licenses, drivers license, and hunting licenses may be suspended, revoked, or restricted. For a further discussion of these provisions, see Cheryl Daniels Howell, Janet Mason, and John Saxon, *1995 Legislation Affecting Family Law*, FAMILY LAW BULLETIN 95/06 (Institute of Government, 1995).

Discipline of attorneys convicted of criminal offenses. Ch. 431 (S 166) makes several changes to Chapter 84 of the General Statutes, which deals with the practice of law in North Carolina. Among other things, the act amends G.S. 84-28(d) to allow the State Bar to discipline an attorney based upon a conviction of a criminal offense without awaiting the outcome of any appeals of the conviction. The amendments apply to disciplinary proceedings involving convictions that occur on or after October 1, 1995.

Civil Liability

Civil liability for larceny, shoplifting, and obtaining property by false pretenses. Ch. 185 (S 259), effective for acts committed on or after December 1, 1995, amends G.S. 1-538.2 to provide for civil liability for additional offenses. The amended statute imposes civil liability for acts punishable under G.S. 14-72 (larceny), 14-72.1 (shoplifting),

14-74 (larceny by employee), 14-90 (embezzlement), and 14-100 (obtaining property by false pretenses). It allows the owner to recover, in addition to the value of the goods taken, compensatory and consequential damages of not less than $150 nor more than $1,000, except that there is no maximum limit for acts punishable under G.S. 14-74 or 14-90. The owner has similar, but somewhat more limited, remedies against the parent or legal guardian of an unemancipated minor. The act also amends G.S. 14-72 (larceny) and 14-72.1 (shoplifting) to provide the same immunity for merchants, their agents, and peace officers who detain a person suspected of taking merchandise from a store.

Court Administration

Drug treatment court pilot project. Ch. 507 (H 230), Sec. 21.6, adds a new Article 62 to Chapter 7A of the North Carolina General Statutes, establishing a drug treatment court program in the Administrative Office of the Courts (AOC). The program's purpose is to facilitate the creation of drug treatment court pilot projects in at least two judicial districts. To enable the AOC to award and administer grants for drug treatment courts, the act releases an $800,000 reserve created during the 1994 extra session. The act states that the funds should be used primarily to provide substance abuse treatment. To assist the AOC in promulgating guidelines for grant applications and the operation of drug treatment courts, the act creates the State Drug Treatment Court Advisory Committee. The Committee will be chaired by the Director of the AOC and will include at least seven members appointed by the Director and broadly representative of the courts, corrections, and treatment communities. Each judicial district applying for a grant must have a local drug treatment court management committee to develop local guidelines and procedures. Each district that receives funding must submit evaluation reports to the AOC as requested; and the AOC must submit a comprehensive report to the General Assembly by May 1, 1998. The act releases the funds to the AOC October 1, 1995; the remainder of the act is effective July 1, 1995, and expires June 30, 1998.

Death Penalty Resource Center. In its 1995-97 continuation budget (Ch. 324, H 229), the General Assembly eliminated funding for the Death Penalty Resource Center. The Resource Center will close September 30, 1995, and a reduced staff will operate a non-profit organization, the Center for Death Penalty Litigation, that will depend on funding from foundations and other sources.

Extension of Sentencing Commission term. Ch. 236 (S 186), effective June 13, 1995, extends the life of the North Carolina Sentencing and Policy Advisory Commission to July 1, 1997.

Case flow management plan. Ch. 333 (H 231), effective June 27, 1995, requests the North Carolina Supreme Court to develop and implement a case flow management plan to reduce delay and increase efficiency in the handling of cases at the trial level. The supreme court is requested to report to the General Assembly on the plan, with any recommended legislation, by May 1, 1996. As part of the expansion budget [Ch. 507 (H 230), Sec. 21.10], the General Assembly also allocated $50,000 for each of the next two fiscal years for a criminal case management pilot program in the twelfth judicial district (Cumberland county) and thirteenth judicial district (Bladen, Brunswick, and Columbus counties).

This publication is issued by the Institute of Government. An issue is distributed to public officials to whom its subject is of interest. Copies of this publication may not be reproduced without permission of the Institute of Government, except that criminal justice officials may reproduce copies in full, including the letterhead, for use by their own employees. Comments, suggestions for further issues, or changes to the mailing lists should be sent to Editor, Administration of Justice Bulletin, at the following address: Institute of Government, CB# 3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330. To order a copy of this *Bulletin* or to request a catalog of other Institute of Government publications, write to the Publications Office at the same address or call (919) 966-4119 or 966-4120 for price information.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 3431 copies of this public document at a cost of $2785.97 or $0.81 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.

Table 1
Effective for offenses committed on or after December 1, 1995

PRIOR RECORD LEVEL [Felony Sentencing]

FELONY CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360	336-420	384-480	Life Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~135-169~~	~~163-204~~	~~190-238~~	~~216-270~~	~~243-304~~	~~270-338~~	~~Aggravated~~
~~**B2**~~	~~108-135~~	~~130-163~~	~~152-190~~	~~173-216~~	~~194-243~~	~~216-270~~	~~PRESUMPTIVE~~
	~~81-108~~	~~98-130~~	~~114-152~~	~~130-173~~	~~146-194~~	~~162-216~~	~~Mitigated~~
	157-196	**189-237**	**220-276**	**251-313**	**282-353**	**313-392**	**Aggravated**
B2	**125-157**	**151-189**	**176-220**	**201-251**	**225-282**	**251-313**	**PRESUMPTIVE**
	94-125	**114-151**	**132-176**	**151-201**	**169-225**	**188-251**	**Mitigated**
	A	A	A	A	A	A	DISPOSITION
	~~63-79~~	~~86-108~~	~~100-125~~	~~115-144~~	~~130-162~~	~~145-181~~	~~Aggravated~~
~~**C**~~	~~50-63~~	~~69-86~~	~~80-100~~	~~92-115~~	~~104-130~~	~~116-145~~	~~PRESUMPTIVE~~
	~~38-50~~	~~52-69~~	~~60-80~~	~~69-92~~	~~78-104~~	~~87-116~~	~~Mitigated~~
	73-92	**100-125**	**116-145**	**133-167**	**151-188**	**168-210**	**Aggravated**
C	**58-73**	**80-100**	**93-116**	**107-133**	**121-151**	**135-168**	**PRESUMPTIVE**
	44-58	**60-80**	**70-93**	**80-107**	**90-121**	**101-135**	**Mitigated**
	A	A	A	A	A	A	DISPOSITION
	~~55-69~~	~~66-82~~	~~89-111~~	~~101-126~~	~~115-144~~	~~126-158~~	~~Aggravated~~
~~**D**~~	~~44-55~~	~~53-66~~	~~71-89~~	~~81-101~~	~~92-115~~	~~101-126~~	~~PRESUMPTIVE~~
	~~33-44~~	~~40-53~~	~~53-71~~	~~61-81~~	~~69-92~~	~~76-101~~	~~Mitigated~~
	64-80	**77-95**	**103-129**	**117-146**	**133-167**	**146-183**	**Aggravated**
D	**51-64**	**61-77**	**82-103**	**94-117**	**107-133**	**117-146**	**PRESUMPTIVE**
	38-51	**46-61**	**61-82**	**71-94**	**80-107**	**88-117**	**Mitigated**
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	**I/A**	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

Table 2
Effective for offenses committed on or after December 1, 1995

PRIOR CONVICTION LEVELS [Misdemeanor Sentencing]

MISDEMEANOR OFFENSE CLASS	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
A1	**C/I/A** **1-60 days**	**C/I/A** **1-75 days**	**C/I/A** **1-150 days**
1	C 1-45 days	C/I/A 1-45 days	C/I/A 1-120 days
2	C 1-30 days	C/I 1-45 days	C/I/A 1-60 days
3	C 1-10 days	C/I 1-15 days	C/I/A 1-20 days