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Criminal Law and Procedure

The 2003 legislative session resulted in no major changes in the criminal law or the criminal justice system. This chapter summarizes new legislation affecting criminal offenses, criminal procedure, law enforcement, and sentencing and corrections. For a discussion of several changes to the Rules of Evidence that apply to criminal cases and fee changes affecting the criminal justice system, see Chapter 5, “Courts and Civil Procedure.” New legislation concerning motor vehicle law and impaired driving is addressed in Chapter 17, “Motor Vehicles.” Legislation regarding child care offenses is discussed in Chapter 3, “Children and Families.” And finally, for a discussion of S.L. 2003-313 (H 826) providing, in part, for the transmittal of reports of mental examinations of criminal defendants pursuant to G.S. 15A-1002, see Chapter 16, “Mental Health.”

Criminal Offenses

Assault and Stalking

Assault in the presence of a minor. Effective December 1, 2003, and applicable to offenses committed on or after that date, S.L. 2003-409 (H 926) amends G.S. 14-33 to create an enhanced punishment for individuals who commit certain Class A1 misdemeanor assaults in the presence of minors. Specifically, anyone who, during an assault or affray and in the presence of a minor, uses a deadly weapon or inflicts serious injury on a person with whom the perpetrator has a personal relationship, must be placed on supervised probation in addition to any other punishment imposed. A second or subsequent such assault must be punished with active time of no less than thirty days, in addition to any other punishment imposed. For purposes of this provision, the term *personal relationship* is defined as in G.S. 50B-1(b) and includes current or former spouses, persons of the opposite sex who live or have lived together or who are or have been in a dating relationship, parent-child and grandparent-child relationships, persons who have a child in common, or persons who live or have lived in the same household. *In the presence of a minor* means that the minor was in a position to have observed the assault. A *minor* is any person who is under eighteen years

old, resides with or is under the care and supervision of the victim or perpetrator, and who has a personal relationship with the victim or perpetrator.

Assaults on and threats to court officers. G.S. 14-16.6 and 14-16.7 criminalize assaults on and threats to court officers. S.L. 2003-140 (H 1048) amends the definition of the term *court officer*, as used in these provisions, to include any attorney or other individual employed by or acting on behalf of the Department of Social Services in abuse, neglect, or dependency proceedings as well as any attorney or other individual appointed pursuant to G.S. 7B-601 or 7B-1108 or employed by the Guardian Ad Litem Services Division of the Administrative Office of the Courts. This amendment became effective December 1, 2003, and applies to offenses committed on or after that date.

Stalking. G.S. 14-277.3 provides that stalking is punished as a Class A1 misdemeanor, unless specific circumstances require a more severe punishment. S.L. 2003-181 (H 304) amends this statute to provide that if a person is convicted of a Class A1 misdemeanor stalking offense and is sentenced to a community punishment, he or she must be placed on supervised probation in addition to any other punishment imposed. S.L. 2003-181 became effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual Assault

Sexual battery. S.L. 2003-252 (S 912) creates a new Class A1 misdemeanor of sexual battery. Under new G.S. 14-27.5A, a person is guilty of this offense if, for the purpose of sexual arousal, gratification, or abuse, he or she engages in sexual contact with a victim either by force and against the victim's will or when the victim is mentally disabled or incapacitated or physically helpless and the perpetrator knows or should reasonably know of this condition. *Sexual contact* is defined in this statute as touching the sexual organ, anus, breast, groin, or buttocks of any person or touching another with one's own sexual organ, anus, breast, groin, or buttocks. *Touching* is defined as physical contact with another, whether directly or through clothing. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual assaults on students. S.L. 2003-98 (S 555) amends provisions criminalizing sexual activity and the taking of indecent liberties with students by school personnel. The new law amends G.S. 14-27.7(b) to provide that a school safety officer who engages in vaginal intercourse or a sexual act with a student at the same school will be punished as a Class G felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as Class G felons only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. Similarly, S.L. 2003-98 amends G.S. 14-202.4 to provide that a school safety officer who takes indecent liberties with a student at the same school will be punished as a Class I felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as Class I felons for this activity only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. S.L. 2003-98 also amends the definition of *same school* to mean a school at which the student is enrolled and the perpetrator is employed, assigned, or volunteers. *School safety officer* is defined as a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safety and order. S.L. 2003-98 became effective December 1, 2003, and applies to offenses committed on or after that date.

For a discussion of S.L. 2003-408 (S 993), providing for automatic revocation of certificates for teachers and school administrators who are convicted of sex offenses, taking indecent liberties with children, and other crimes, see Chapter 8, "Elementary and Secondary Education."

Peeping

Prior to passage of S.L. 2003-303 (H 408), the peeping statute, G.S. 14-202, made it a Class 1 misdemeanor to peep secretly into a room occupied by a female. S.L. 2003-303 amends this provision, making it gender neutral and prohibiting secret peeping into a room occupied by any

person, male or female. S.L. 2003-303 also amends G.S. 14-202 to create the following new felony and misdemeanor peeping offenses.

- Any person who while secretly peeping possesses a device capable of creating a photographic image shall be guilty of a Class A1 misdemeanor.
- Any person who while secretly peeping uses a device to create a photographic image of another for the purpose of arousing or gratifying any person's sexual desire shall be guilty of a Class I felony.
- Any person who without consent secretly uses a device to create a photographic image of another underneath or through his or her clothing for the purpose of viewing that person's body or undergarments shall be guilty of a Class I felony.
- Any person who, for the purpose of arousing or gratifying any person's sexual desire, secretly uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without his or her consent shall be guilty of a Class I felony.
- Any person who knowingly possesses a photographic image that he or she knows or has reason to believe was obtained in violation of G.S. 14-202 shall be guilty of a Class I felony.
- Any person who disseminates or allows to be disseminated images that he or she knows or should have known were obtained as a result of a violation of G.S. 14-202 shall be guilty of a Class H felony, if the dissemination is without the consent of the person depicted.

The term *photographic image* is defined to mean any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual. The term *room* includes, but is not limited to, bedrooms, restrooms, bathrooms, showers, and dressing rooms. Exceptions are delineated for law enforcement officers discharging or attempting to discharge their duties, Department of Correction and local confinement facility personnel, and certain individuals licensed pursuant to G.S. Chapter 74C, Private Protective Services, or G.S. Chapter 74D, Alarm Systems. The new law provides for enhanced sentences for second or subsequent offenses, contains provisions regarding obtaining psychological evaluations of defendants placed on probation for peeping offenses, and provides that certain peeping convictions may require the sentencing judge to order the defendant to register as a sex offender. Finally, the new law creates a civil cause of action for victims. S.L. 2003-303 became effective December 1, 2003, and applies to offenses committed on or after that date.

Arson and Other Burnings

Article 15 of G.S. Chapter 14 pertains to arson and other burnings. S.L. 2003-392 (S 661) adds new G.S. 14-69.3 to that article, making it a Class E felony to commit any felony included in Article 15 that results in serious bodily injury to a firefighter or emergency medical technician. The term *emergency medical technician* includes emergency medical technicians, technician-intermediates, and technician-paramedics.

S.L. 2003-392 also amends G.S. 14-49, creating a new bombing offense involving government buildings. Under the provision, any person who willfully and maliciously damages, aids, counsels, or procures the damaging by the use of any explosive or incendiary device or material of any building owned or occupied by the state or any of its agencies, institutions, or subdivisions or by any county, incorporated city or town, or other governmental entity is guilty of a Class E felony.

Both changes became effective December 1, 2003, and apply to offenses that occur on or after that date.

Controlled Substances

S.L. 2003-249 (S 694) creates new G.S. 90-89.1, providing that a controlled substance analogue shall, to the extent intended for human consumption, be treated as a Schedule I (G.S. 90-89) controlled substance. A *controlled substance analogue* is defined, in part, as a substance that has a chemical structure or effect similar to or greater than a Schedule I or II (G.S. 90-90)

controlled substance. Certain substances are specifically excluded from the definition, including, among others, controlled substances and substances for which there is an approved new drug application or for which certain exemptions for investigational use are in effect. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Weapons

Firearms in domestic violence cases. S.L. 2003-410 (S 919) provides for the surrender of firearms in domestic violence cases, creates several new firearms felonies that apply in such cases, and amends the Class H firearms felony proscription in G.S. 14-269.8.

S.L. 2003-410 creates new G.S. 50B-3.1, providing that when issuing an emergency or ex parte order under G.S. 50B, the court must, if certain factors are found, order the defendant to surrender all firearms, machine guns, ammunition, and permits to purchase firearms or carry concealed firearms. When surrender is ordered, the court must include in the protective order a term prohibiting the defendant from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm. The new statute also creates several new felony offenses related to the surrender procedures. Under G.S. 50B-3.1(i) it is a Class H felony for any person subject to a protective order prohibiting the possession or purchase of firearms to (1) fail to surrender all items as ordered; (2) fail to disclose all information pertaining to firearms, ammunition, and permits as requested by the court; or (3) provide false information to the court regarding such items. S.L. 2003-410 also amends G.S. 14-269.8 to provide that, in accordance with G.S. 50B-3.1, it is a Class H felony to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, machine gun, ammunition, or permits to purchase or carry concealed firearms when a 50B protective order prohibiting such activity is in place. Finally, G.S. 50B-3.1(k) creates an official use exemption for violations of G.S. 50B-3.1. S.L. 2003-410 became effective December 1, 2003, and applies to offenses committed on or after that date.

Concealed weapons. S.L. 2003-199 (S 33) creates new G.S. 14-415.24, making out-of-state permits to carry concealed weapons valid in North Carolina if the permit is issued by a state that honors North Carolina's permits. S.L. 2003-199 also amends G.S. 14-269(a1) to exempt from the offense of carrying a concealed weapon a handgun for which the person has a permit now considered valid under G.S. 114-415.24. S.L. 2003-199 was signed by the governor on June 14, 2003. These provisions became effective sixty days later.

Escape

G.S. 14-239 makes it a Class 1 misdemeanor for a sheriff, deputy sheriff, or jailer to willfully allow the escape of an individual in his or her custody who has been charged with a crime or sentenced after conviction. S.L. 2003-297 (H 1037) expands the coverage of this provision to include (1) other custodial personnel in the list of individuals subject to the offense and (2) allowing the escape of individuals who have been committed to the Department of Juvenile Justice and Delinquency Prevention. S.L. 2003-297 became effective December 1, 2003, and applies to offenses committed on or after that date. For a discussion of those portions of S.L. 2003-297 pertaining to photographing juveniles in juvenile detention facilities and the release of photographs to the public if the juvenile escapes, see Chapter 3, "Children and Families."

Rebirthing

S.L. 2003-205 (S 251) was a response, in part, to the death in 2000 of Candace Newmaker, a North Carolina child, from a form of attachment therapy called rebirthing. The American Psychological Association does not recognize rebirthing as a proper treatment. S.L. 2003-205 creates new G.S. 14-401.21, making it unlawful to practice rebirthing or related techniques. The new provision makes it unlawful to practice any technique to reenact the birthing process in a manner that includes restraint and creates a situation in which a patient may suffer physical injury or death. A first offense is punished as a Class A1 misdemeanor. A second or subsequent offense

is punished as a Class I felony. The new provision became effective December 1, 2003, and applies to offenses committed on and after that date.

Hazing

S.L. 2003-299 (H 1171) amends G.S. 14-35, the provision prohibiting and defining hazing. The amendments redefine *hazing* to mean subjecting another student to physical injury as part of an initiation or prerequisite to membership into any organized school group. They also specify that the prohibition on hazing contained in G.S. 14-35 applies to students attending any university, college, or school in the state. Finally, S.L. 2003-299 repeals G.S. 14-36, which had required expulsion of a student convicted of hazing and made failure to expel the student a Class 1 misdemeanor. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Financial Fraud

Effective March 1, 2004, S.L. 2003-206 (H 357) creates new G.S. 14-113.24, making it an infraction for individuals who accept credit, charge, or debit cards for the transaction of business to print more than five digits of the card's account number or the card's expiration date on a receipt. The new infraction is subject to a fine of up to \$500 per violation, not to exceed \$500 in any month or \$2,000 in any year. Anyone who receives a citation for violating this section is not subject to penalty if he or she establishes compliance within thirty days. The new infraction applies to machines first used on or after March 1, 2004, but all machines must be in compliance by July 1, 2005. The infraction does not apply to persons who record transactions by hand or by an imprint or a copy of a card.

Also effective March 1, 2004, S.L. 2003-206 creates new G.S. 14-113.25, making it an infraction to sell or offer to sell a device that cannot be programmed or operated to produce a receipt in compliance with G.S. 14-113.24. This infraction is subject to a penalty of up to \$500 per violation.

Unauthorized Sound and Video Recordings

G.S. Chapter 14, Article 58, deals with the pirating of audio and video recordings and live performances. Effective December 1, 2003, and applicable to offenses committed on or after that date, S.L. 2003-159 (H 42) makes various amendments to this article, including

- creating a webcasting and Internet service provider exception to G.S. 14-433 (recording of live performances or recorded sounds and distribution of such recordings unlawful in certain circumstances);
- rewriting G.S. 14-435 (recorded devices to show true name and address of manufacturer); and
- modifying G.S. 14-437(a), the criminal penalty provision. Under the amended statute, the general rule is that violations of Article 58 constitute Class 1 misdemeanors. Punishment is elevated to a Class I felony with a maximum fine of \$150,000 if the offense (1) involves at least one hundred unauthorized articles during any 180-day period or (2) is a third or subsequent conviction for an offense that involves at least twenty-six unauthorized articles during any 180-day period.

Pyrotechnics

Article 54 of G.S. Chapter 14 pertains to pyrotechnics. S.L. 2003-298 (S 521) makes several changes to this article, primarily affecting the indoor use of pyrotechnics. Additionally, S.L. 2003-298 amends G.S. 14-415, the provision pertaining to criminal penalties for violations of this article. Before the amendments, all violations of Article 54 were punished as Class 2 misdemeanors. Now, violations involving indoor exhibitions are punished as Class 1 misdemeanors. The amendments

to G.S. 14-415 become effective December 1, 2003, and apply to offenses committed on or after that date.

Animals and Hunting

Transporting or breeding coyotes. S.L. 2003-96 (S 245) makes it a Class 1 misdemeanor to breed coyotes or to transport or attempt to transport live coyotes into the state. Conviction will result in a two-year suspension of a controlled hunting preserve operator license. This provision became effective October 1, 2003, and applies to acts committed on or after that date.

Commercial taking of turtles or terrapins. Subject to certain exemptions, S.L. 2003-100 (S 825) prohibits the commercial taking of certain turtles or terrapins until the Wildlife Resources Commission adopts rules to regulate their taking. Violators are guilty of a misdemeanor and will be punished as provided in G.S. 113-135. The new prohibition became effective July 1, 2003, and applies to offenses committed on or after that date.

Importing or possessing black-tailed or mule deer. S.L. 2003-344 (H 948) amends G.S. 113-294, creating a new Class 1 misdemeanor that applies to any person who willfully imports or possesses black-tailed or mule deer. The new misdemeanor provision became effective October 1, 2003, and applies to acts committed on or after that date.

Regulatory Offenses

Amusement devices. S.L. 2003-170 (H 609) makes several changes to the Amusement Device Safety Act of North Carolina, found in Article 14B of G.S. Chapter 95. The new law provides that no person shall operate amusement device equipment while under the influence of alcohol or any other impairing substance or knowingly permit the operation of any device by a person under the influence of an impairing substance. S.L. 2003-170 also creates a new subsection in G.S. 95-111.13, providing that a willful violation of Article 14B resulting in death is a Class 2 misdemeanor, and punishment may include a fine of up to \$10,000. Second or subsequent convictions are punished as Class 1 misdemeanors, and punishment may include a fine of up to \$20,000. The amendment to G.S. 95-111.13 became effective December 1, 2003, and applies to offenses committed on or after that date. The other changes became effective October 1, 2003.

State unemployment tax dumping. S.L. 2003-67 (S 326) is designed to deter businesses from engaging in state unemployment tax (SUTA) dumping, the practice of setting up dummy corporations to avoid paying state unemployment tax. Effective December 1, 2003, the new law makes it a felony to engage in SUTA dumping.

Securities fraud. S.L. 2003-413 (S 925) amends various laws pertaining to securities fraud. It amends the criminal penalties provisions and creates a new felony obstruction of justice offense for obstruction of an investigation. These changes apply to offenses committed on or after December 1, 2003.

Sexually explicit conduct on premises licensed by the Alcoholic Beverage Control (ABC) Commission. S.L. 2003-382 (S 996) was passed in response to a preliminary injunction issued by the United States District Court for the Middle District of North Carolina enjoining the state from enforcing regulations prohibiting sexually explicit conduct on premises licensed by the ABC Commission. In its ruling the federal court indicated that the regulations are likely to be held unconstitutional. S.L. 2003-382 represents an attempt to craft new regulations that will withstand constitutional scrutiny. The law deletes problematic language in G.S. 18B-1005(a) and creates new G.S. 18B-1005.1, making it a Class 1 misdemeanor for a permittee, agent, or employee to knowingly allow or engage in the following on licensed premises:

- conduct or entertainment by any person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals;
- conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into a person's genital or anal opening; or
- conduct or entertainment that includes fondling of the breasts, buttocks, anus, vulva, or genitals.

The new provision also makes it unlawful for a permittee to fail to superintend the permitted business. Excepted from the new G.S. 18B-1005.1 are persons operating theaters, concert halls, art centers, museums, or similar establishments primarily devoted to the arts or theatrical performances, when the performances are expressing matters of serious literary, artistic, scientific, or political value. The new provision became effective August 1, 2003.

Uniform Athlete Agents Act. S.L. 2003-375 (S 563) adopts the Uniform Athlete Agents Act (UAAA) as new Article 8A of G.S. Chapter 78C. Among other things, the UAAA prohibits an athlete agent, with the intent to induce a student-athlete to enter into an agency contract, from (1) providing any materially false or misleading information or making a materially false promise or representation, (2) furnishing anything of value to a student-athlete before the athlete enters into the agency contract, or (3) furnishing anything of value to any individual other than the student-athlete or another registered athlete agent. Violations of these prohibitions constitute Class I felonies. This provision of the UAAA is effective December 1, 2003, and applies to acts committed on or after that date.

Unlawful practice of pharmacy. The budget bill, S.L. 2003-284 (H 397), effective July 1, 2003, contained several substantive provisions. Section 10.8D, which creates new G.S. 90-85.21B, makes it a Class 1 misdemeanor for an individual or business to falsely hold him-, her-, or itself out as licensed or registered to practice pharmacy.

Economic Investment Committee conflicts of interest. G.S. 143B-437.54 established the Economic Investment Committee. S.L. 2003-416 (S 97) amends the provision's prohibition on conflicts of interest to include current as well as former committee members. This change became effective August 14, 2003.

Kerosene licensing. Effective January 1, 2004, S.L. 2003-349 (S 236) creates requirements regarding bonds or letters of credit as conditions for obtaining and keeping certain kerosene licenses. Failure to comply with the requirements is a Class 1 misdemeanor.

Criminal Procedure

Order for Arrest after Failure to Appear for Citation

S.L. 2003-15 (S 440) amends the citation statute, G.S. 15A-302, and the order for arrest statute, G.S. 15A-305, to provide that an order for arrest for failure to appear may be issued when an individual fails to appear in court as directed by a citation charging that individual with a misdemeanor. The new provision became effective April 19, 2003.

Bail Bonds

S.L. 2003-148 (S 962) creates new G.S. 58-71-141, providing that before receiving an appointment, a surety bondsman must submit an affidavit stating that he or she (1) does not owe any premium or unsatisfied judgment to any insurer and (2) agrees to discharge all outstanding forfeitures and judgments on bonds previously written. If the bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer affected must notify, among others, the appointing insurer. Upon receipt of such notification, the appointing insurer must immediately cancel the surety bondsman's appointment. S.L. 2003-148 also creates procedures for reappointment and appeal and authorizes the Commissioner of Insurance to adopt rules implementing the new requirements. The new provision became effective October 1, 2003, and applies to all appointments on or after that date.

DNA Samples

S.L. 2003-376 (H 79) substantially revises G.S. 15A-266.4, the statute requiring that DNA samples be taken from persons convicted of certain crimes, and G.S. 15A-266.6, the statute establishing procedures for obtaining those samples. As revised, G.S. 15A-266.4 provides that unless a DNA sample has previously been obtained and has not been expunged, a sample must be

taken from any person who is (1) convicted of any felony, assault on a handicapped person, or stalking or (2) found not guilty of any of these crimes by reason of insanity and committed to a mental health facility. Samples will be drawn from individuals committed to jail, prison, or a mental health facility upon intake at those locations. Samples will be drawn from individuals who were confined before the statute's effective date before parole or release from a mental health facility. Under new procedures for obtaining samples from defendants who are not sentenced to a term of confinement, the sentencing court must order the defendant to report immediately to a location designated by the sheriff. If the sample cannot be taken immediately, the sheriff must notify the court when and where it will be taken, and the court must include this information in its order. If the defendant fails to appear to provide the sample as ordered, the sheriff must notify the court and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The State Bureau of Investigation must provide the sheriff the materials and supplies necessary to draw samples from defendants not sentenced to terms of confinement and these materials and supplies must be used when taking samples from those defendants. The new law also revises G.S. 15A-266.12, the statute pertaining to the confidentiality of DNA samples. S.L. 2003-376 became effective December 1, 2003.

Criminal History Records

Effective June 19, 2003, S.L. 2003-214 (H 1024) adopts the National Crime Prevention and Privacy Compact. The compact creates a legal framework for interstate and federal-state exchange of criminal history records for noncriminal justice purposes, such as background checks for governmental licensing and employment.

Law Enforcement

Veterans Administration Police Officers

S.L. 2003-36 (H 24) amends G.S. 15A-406(a) to add Veterans Administration police officers to the list of federal law enforcement officers authorized to enforce criminal laws in North Carolina, as provided in G.S. 15A-406. This law became effective May 14, 2003.

AMBER Alert System

S.L. 2003-191 (H 478) modifies the provisions in G.S. Chapter 143B pertaining to the North Carolina Child Alert Notification System. The new legislation renames the system the AMBER Alert System and modifies the criteria established in G.S. 143B-499.7 specifying the circumstances when the system must make efforts to disseminate information on missing children as quickly as possible. Under the amended criteria, the system must do so when

- the child is seventeen years of age or younger,
- the abduction is not known or suspected to be by the child's parent (unless the child is suspected to be in danger of injury or death),
- the child is believed to have been abducted or to be in danger of injury or death,
- the child is not a runaway or voluntarily missing, and
- the abduction has been reported to and investigated by a law enforcement agency.

These changes became effective June 12, 2003.

Sentencing and Corrections

Enhanced Sentences

S.L. 2003-378 (S 693) amends several statutes prescribing enhanced sentences to conform them to decisions by the United States and North Carolina Supreme Courts in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *State v. Lucas*, 353 N.C. 568, 548 S.E.2d 712 (2001), and other cases. Specifically, S.L. 2003-378 amends the firearm enhancement statute, G.S. 15A-1340.16A, to provide that the facts necessary to establish the enhancement must be alleged in the indictment and proved beyond a reasonable doubt at trial, unless the defendant pleads guilty or no contest. Parallel changes are made to G.S. 15A-1340.16B (providing for enhanced punishment for second or subsequent convictions of Class B1 felonies when the victim is thirteen years of age or younger and there are no mitigating factors) and G.S. 15A-1340.16C (providing for enhanced punishment when the defendant wears or possesses a bulletproof vest). S.L. 2003-378 became effective August 1, 2003, and applies to offenses committed on or after that date.

Use of Force and Arrest by Corrections Officers

Effective July 27, 2003, S.L. 2003-351 (H 497) removes the sunset on the use of force and power of arrest granted to private correctional officers in S.L. 2001-378.

Substance Abuse Treatment

G.S. 15A-1343 sets out the law regarding conditions of probation necessary to help and ensure that defendants will lead law-abiding lives. S.L. 2003-141 (H 352) adds a new subsection to that statute, requiring defendants ordered to residential treatment in the Drug Alcohol Recovery Treatment Program (DART) to undergo a screening to determine chemical dependency. If the screening indicates chemical dependency, the court must order an assessment to determine the appropriate treatment level. The assessment may be conducted before or after the court imposes the condition, but program participation must be based on the results of the assessment. S.L. 2003-141 also repeals G.S. 15A-1351(h), which had allowed sentencing judges to recommend, in orders of commitment, that defendants be assigned to a Substance Abuse Treatment Unit. Finally, the new law amends G.S. 143B-262.1(h), deleting a court recommendation as one of the factors determining priority admission to the Substance Abuse Program. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Probation

S.L. 2003-151 (S 93) amends G.S. 15A-1351(a), removing the six-month time limitation on the total of all periods of confinement imposed as an incident of special probation. The only limitation remaining is that such periods may not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense. A parallel change is made to G.S. 15A-1344(e) (responses to probation violations). The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Reimbursement for Prisoners Awaiting Transfer to the State Prison System

The state budget, S.L. 2003-284, established several fees affecting the criminal justice system. Section 16.2 of the budget sets the fee that the Department of Correction pays counties to house prisoners awaiting transfer to the state prison system at \$40 per day.

Studies

The state budget, S.L. 2003-284, requires several studies pertaining to the criminal justice system, including one on public defender offices (Section 13.6) and another on probation and parole caseloads (Section 16.18).

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