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UPDATE TO BOOK *LAW OF SENTENCING, PROBATION, AND PAROLE IN NORTH CAROLINA* (2D ED. 1997), REFLECTING LEGISLATION AND CASE LAW IN 1997 AND 1998

■ Stevens H. Clarke

The Institute of Government's book *Law of Sentencing, Probation, and Parole in North Carolina*, Second Edition 1997, by Stevens H. Clarke, appeared in October 1997. It covered relevant court decisions through March 1996, as well as legislation through the 1996 General Assembly session. An addendum inserted in the book summarized legislative changes in the 1997 session. Individual copies of the 1997 book, at a price of $28 plus tax, may be ordered from the Institute of Government by calling the Publications Sales Office at (919)966-4119.

This bulletin supplements the 1997 book. It covers the 1997 legislation summarized in the addendum to the book as well as legislation during the 1998 session. It also summarizes relevant decisions since March 1996 by the North Carolina Supreme Court and Court of Appeals. The information is organized under the appropriate titles of the book's chapters, with references to relevant page numbers. The abbreviation "FSA" refers to the Fair Sentencing Act and "SSA" to the Structured Sentencing Act (called "SSL" in the book).

Like the 1997 book, this bulletin does not cover capital punishment. For information on that subject, the reader should consult the 1996 Institute of Government publication *North Carolina Capital Case Law Handbook*, by Robert Farb.

Chapter 1. Authorized Types of Sentences

Legislation in 1997 and 1998

IMPACT ("boot camp") program (pages 11, 16)

S.L. 1997-443, sec. 19.11, amended G.S. 15A-1343(b1)(2a) to provide that the boot camp confinement may be in any facility operated by the DOC (formerly it had to be in a facility for youthful offenders). As a condition of probation, IMPACT may include a period of supervision, or aftercare, after the offender has completed the program.

S.L. 1998-212, sec. 17.21, effective December 1, 1998, changed IMPACT to make it a program administered by DAPP (the Division of Adult Probation and Parole of DOC), with the boot camp portion housed in facilities operated by DAPP rather than the Division of Prisons. Sec. 17.21 amended G.S. 15A-1343(b1), -1343.1, -1344(e), and -1351(a) to make IMPACT a residential treatment program as defined by the SSA, G.S. 15A-1340.11(8). Although IMPACT will no longer be a part of special probation, it will continue to be a condition of probation, and will continue to qualify, under G.S. 15A-1340.11(6)b, as an intermediate punishment for purposes of the SSA. The eligibility criteria for IMPACT remain unchanged: to participate, the offender must be 16 to 30 years of age; must be convicted of a felony or a Class 1 or A1 misdemeanor; and must pass a medical examination (G.S. 15A-1343.1). The length of IMPACT treatment remains 90 to 120 days under G.S. 15A-1343(b1)(2a).

Due to the legislation making IMPACT a residential treatment program and not special probation, IMPACT participants may no longer receive credit for the time they spent on the program applied to their activated prison term if their probation is revoked. Formerly, when IMPACT participation was considered special probation confinement, credit for it toward an activated prison term was required under *State v. Farris*, as explained on p. 130 of the book. It is unclear whether the new residential treatment form of IMPACT amounts to confinement.

Another consequence of the IMPACT legislation is that the time restrictions of special probation confinement no longer apply to it. Formerly, G.S. 15A-1344(e) and –1351(a) limited the confinement to six months or half or the maximum suspended prison term, whichever was less, where IMPACT was involved. Under the new legislation, apparently the sentencing judge can order IMPACT as a residential treatment whenever an intermediate punishment is authorized, even though the 90-to-120-day period of IMPACT might exceed half the maximum suspended prison term. Thus, IMPACT may become an option in some Class 1 and A1 misdemeanor sentences and even in some felony sentences in which formerly it could not have been used because the maximum suspended prison term was less than 180 days.

Community service program (pages 12-13)

S.L. 1997-234, effective October 1, 1997, and applicable to any person notified of a hearing concerning failure to perform community service on or after that date, amended G.S. 20-17(b) requiring the DMV, on the basis of information provided by the clerk of court, to revoke the driver's license of "any person who has willfully failed to complete court-ordered community service and [sic] a court has issued a revocation order." This revocation is to continue until the DMV receives notice from the court that the community service has been completed. The apparent intent of the legislation is to include failure to complete community service ordered for any offense, not just traffic offenses. If the revocation of the driver's license in this situation is a punishment for crime, it is unclear whether it is authorized by art. XI, sec. 1, of the North Carolina Constitution, even with the 1996 amendment explained at the beginning of Chapter 1.

S.L. 1998-217, sec. 34 addressed the problem that some offenders refuse to perform their community service—a problem worsened if they fail to appear in court to answer to the violation and cannot be found by officers. This legislation added subsection (f) to G.S. 143B-475.1 to provide that the community service staff "shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service." If the community service staff find such a violation, they must notify the offender obligated to perform the service by mail or personal delivery of a hearing regarding the violation, at least ten days before any hearing, and state the basis of the alleged violation. The court that ordered the service must conduct the hearing even if the offender fails to appear. The purpose of the hearing is to determine whether there was a willful failure to perform the service. If the court so finds, it must revoke the offender's driver's license, and notify the Division of Motor Vehicles to revoke the license until the community service has been performed. Also, the

court may take any action authorized for violation of probation.

Intensive supervision program (ISP) (pages 12, 16, 137)

S.L. 1997-57, applicable to offenses committed on or after December 1, 1997, revised G.S. 143B-262(c) to make clear that the intensive supervision program is available for post-release supervisees as well as probationers and parolees. The bill also provided that offenders assigned by the sentencing court or by the Post-Release Supervision and Parole Commission to the ISP must "comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)." Apparently the intent was to insure compliance with rules administratively set for the program even though these may not be stated explicitly in the court's judgment or in the commission's order. S.L. 1997-57 also amended G.S. 15A-1340.11(5) and 15A-1343(b1)(3b) to specify that unless otherwise ordered by the court, intensive supervision of a probationer must involve "multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment."

Electronic house arrest (page 13)

S.L. 1997-57, applicable to offenses committed on or after December 1, 1997, replaced the current definition of "electronic monitoring," in G.S. 15A-1340.11, with a definition of "house arrest with electronic monitoring." This house arrest is to be a condition of probation in which the probationer must remain at home, with compliance monitored by an electronic device worn by the probationer, unless the court or the probation officer authorizes the probationer to leave for the purpose of employment, counseling, a course of study, or vocational training. The legislation made a conforming change in G.S. 15A-1343(b1), applying the revised definition of electronic house arrest to the special conditions of probation that a court may impose. These changes will make it clear that the probation officer, as well as the court, has the authority to allow the probationer who is under electronic house arrest to leave home for the specified purposes.

Restitution (pages 20-21)

S.L. 1998-212, sec. 19.4(d), created art. 81C of G.S. Chapter 15A as part of the package implementing the Victims' Rights Amendment to the North Carolina Constitution. This measure, which made some important changes in the law concerning restitution, was effective December 1, 1998, and applies to offenses that occur on or after that date.

New G.S. 15A-1340.24 provides that a judge, in sentencing a convicted defendant, *must determine* whether the defendant should be ordered to pay restitution to the crime victim. (In previous law—for example, G.S. 15A-1343(d)—judges were allowed to order restitution but not required to consider it.) Furthermore, if the offense is one of the serious offenses in new art. 45A (G.S. 15A-830(a)(7)), new G.S. 15A-1340.24(b) provides that "the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant." In other words, for these offenses, the judge *must order* restitution. (The art. 45A offenses include all felonies in Classes A through E, certain other felonies, and certain misdemeanors, such as assaults and stalking, in which the victim and the defendant have a personal relationship such as marriage, cohabitation, or parent and child.) The restitution must be a condition of probation if the defendant is sentenced to probation, and must be a condition of supervised release from prison if the defendant receives supervised release.

With regard to the requirement that the sentencing judge order restitution for art. 45A offenses, new G.S. 15A-1340.24(b) says that restitution must be ordered "in addition to any penalty authorized by law . . ." This apparently means that restitution must be ordered for these offenses even if the court does not sentence the defendant to probation. This is an important change from current practice, in which restitution usually is a condition of probation. The apparent intent is to require an order of restitution even if the defendant is sentenced to active imprisonment and is ineligible for supervised release under the SSA (G.S. 15A-1368.1 limits eligibility to those who have received active imprisonment for Class B1 through E felonies).

Determining the amount of restitution, under new G.S. 15A-1340.25 and 15A–1340.26, is quite similar to the former procedure of G.S. 15A-1343(d), but some provisions are more specific. The determination must include various types of medical and psychological treatment if the victim was injured; income lost by the victim as a result of the offense; and return of property lost or damaged or payment of its value. If the offense

results in the victim's death, the amount is to include funeral costs. Under new G.S. 15A-830(b), if the victim is deceased, his or her next of kin are entitled to the restitution. As under previous law, new G.S. 15A-1340.26 requires the court to take into consideration the resources of the defendant in determining the amount to be ordered, and allows the court to order partial restitution if it finds that the defendant is unable to pay for all of the loss. The court may either require the defendant to make full restitution no later than a certain date or require payment in installments over a specified period. The judge, as under prior law, must consider whether to recommend that the restitution be paid (1) from work-release earnings if the defendant receives work-release while in prison, and (2) from earnings or other sources if the defendant receives parole or supervised release.

New G.S. 15A-1340.27 continues some other provisions formerly in G.S. 15A-1340(d): A restitution order does not abridge the right of the victim or victim's estate to bring a civil action against the defendant for damages resulting from the crime. Any amount paid pursuant to the restitution order is to be credited against the defendant's civil liability. The court may order the defendant to make restitution to a person other than the victim, or to an organization (including the Crime Victims' Compensation Fund under G.S. ch. 15B), if the person or organization provides assistance to the victim after the crime "and is subrogated to the rights of the victim." However, restitution must be made to the victim or his or her estate before it is made to any other person or organization. Restitution may not be ordered to a government agency except for damage or loss over and above its normal operating costs; however, the state may receive restitution for the costs of an appointed defense attorney pursuant to G.S. 7A-455(b). A third party, such as an insurance company, may not benefit because of restitution payments to the crime victim, and the fact that the victim is insured does not limit the court's power to order restitution.

Under certain circumstances, if the defendant is ordered to pay more than $250 in restitution, the order may be enforced like a civil judgment. New G.S. 15A-1340.28(a) qualifies this provision by making it applicable only to "an order for restitution under G.S. 15A-1340.24(b)." Presumably the intent is to apply civil enforcement procedure only to those serious offenses, mentioned earlier, that are covered by new art. 45A of G.S. Chapter 15A. G.S. 15A-1340.28(b) provides that an order for restitution for such an offense must be docketed and indexed as a civil judgment as provided by G.S. 1-233 and –234, and may be collected as any other civil judgment. The subsection also provides that "[t]he judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation." If the restitution is a condition of probation, under subsection (c) the docketed judgment ordinarily may not be executed on the defendant's property unless the judge notifies the clerk of court that the defendant's probation is terminated or revoked and restitution remains unpaid. At that point, the clerk must docket the unpaid amount and notify the victim by mail that the judgment may be executed. One exception to this procedure occurs if the defendant, while still on probation, transfers property to another person. Such transferred property, under G.S. 15A-1340.28(c), is not subject to the stay of execution that applies to the defendant's property during probation. In other words, the clerk may issue a writ of execution against the transferred property without awaiting termination or revocation of the probation.

If the restitution is *not* a condition of probation (for example, if it accompanies an active sentence), it is subject to collection as a civil judgment. However, under G.S. 15A-1340.26(b), the date when the civil debt is collectible would presumably depend on the payment date or payment schedule set by the sentencing judge.

The 1998 legislation regarding civil docketing of restitution orders apparently supersedes the procedures of present G.S. 1-15.1 with regard to the serious offenses covered by art. 45A of G.S. Chapter 15A. G.S. 1-15.1 concerns a civil action for damages filed by a crime victim against the offender. It tolls the statute of limitations for the action from the time the restitution order is entered until it is paid in full. It also provides that at the civil trial, the defendant may contest the amount of the damages, and the amount of the restitution order is not admissible in evidence. This statute presumably continues to apply to offenses not covered by the victims' rights legislation.

The legislation made other important changes regarding execution of a restitution order as a civil judgment. It amended G.S. 1-234 to make clear that a restitution judgment docketed under new G.S. 15A-1340.28 constitutes a lien against the defendant's property. Furthermore, it alters G.S. 1C-1601(e) to remove the G.S. Chapter 1C, art. 16 exemptions of property from execution of a criminal restitution order under G.S. 15A-1340.28. G.S. 1C-1601 exempts from creditor's claims portions of the value of certain property—for example, the debtor's residence, motor vehicle, professional tools, and personal household furnishings. These kinds of property will now be subject to execution of a restitution judgment.

S.L. 1998-212, sec. 19.4(d), also amended G.S. 7A-304(d) to change the priorities for distribution of funds paid to the clerk of court for fines, court costs, and restitution. Restitution payments to the victim will now have top priority in distribution, ranking ahead of costs to the county or city and fines to the county school fund.

Chapter 2. Sentencing Procedure

Legislation in 1997 and 1998

Community penalties program (page 44)

S.L. 1997-57, applicable to offenses committed on or after December 1, 1997, amended G.S. 7A-771 to expand the definition of "targeted offenders" for purposes of the community penalties program to include persons *charged with* misdemeanors or felonies as well as those *convicted* of them.

Victim impact information and the Victims' Rights Amendment (pages 45-46)

The Victims' Rights Amendment, art. I, sec. 37 of the North Carolina Constitution, adopted in 1996, required implementing legislation to become effective. This legislation was enacted in S.L. 1998-212, Part XIX. Much of the legislation involved notification of victims and other matters in the pretrial stage of criminal cases, but some provisions involved sentencing. New G.S. 15A-833, effective December 1, 1998, and applicable to offenses committed on or after that date, gives the victim "the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant." This evidence may include the victim's physical or psychological injury and economic or property loss. Also the victim may submit a request for restitution and may indicate whether he or she has applied for or received compensation under the new Crime Victims' Compensation Act (G.S. chapter 15B).

Sentencing Commission (pages 48-49)

S.L. 1997-443, sec. 18.6, amended portions of earlier session laws as well as G.S. 164-38 to make the Sentencing and Policy Advisory Commission a permanent body rather than a temporary one renewed from session to session. Its members will serve two-year terms.

The 1998 session brought an additional duty for the commission: evaluating correctional programs. S.L. 1998-212, sec. 16.18, repealed previous legislation (S.L. 1996, Second Extra Session, ch. 18, sec. 22.3) which had required the annual reporting of recidivism rates. The 1998 measure called on the Sentencing Commission and DOC jointly to conduct "evaluations of community corrections programs and in-prison treatment programs" and report these biennially to the General Assembly. The reports must include "composite measures of program effectiveness based on recidivism rates, other outcome measures, and costs of the programs." The commission must create an expanded database with information on each offender's "prior convictions, current conviction and sentence, program participation, and outcome measures."

Felony sentencing: new requirement of life without parole (pages 54-56)

S.L. 1998-212, sec. 17.16, applicable to offenses committed on or after January 1, 1999, added G.S. 15A-1340.16B. This new section makes an exception to the felony sentencing grid (G.S. 15A-1340.17) shown in Table 5: a person convicted of a Class B1 felony (such as first-degree rape or first-degree sexual offense) *must* receive a sentence of life imprisonment without parole if (1) the person has a prior conviction of a Class B1 felony; (2) the victim was age 13 or younger at the time of the offense; and (3) the court finds no mitigating factors under G.S. 15A-1340.16(e). If the court finds mitigating factors, it must sentence the person in accordance with the usual SSA provisions.

Felony sentencing: points for impaired driving (page 57)

S.L. 1997-486 amended G.S. 15A-1340.14(b)(5) to provide that, effective December 1, 1997, in determining the offender's prior record level with regard to sentencing for a felony, one point is assigned to each prior Class A1 or Class 1 misdemeanor conviction of impaired driving under G.S. 20-138.1 and to each prior Class 1 misdemeanor conviction of impaired driving in a commercial vehicle under G.S. 20-138.2. Conviction of misdemeanor death by vehicle under G.S. 20-141.4(a2) continues to be assigned one point. Other than the ones mentioned, no Class 1 misdemeanors under G.S. Chapter 20 receive any points.

Misdemeanor sentencing: sentence to "credit for time served" (pages 60-62)

When a defendant spends time in confinement while awaiting trial, as explained in Chapter 4, G.S. 15-196.1 requires that this time be credited toward any active imprisonment he or she is sentenced to. A common practice, especially where relatively minor offenses are involved, is to impose an active sentence equal to the time the offender has already spent in jail awaiting trial. The result is that although the offender is immediately released, there is at least a symbolic punishment. The SSA made it difficult to continue this practice, because for Class 1, 2, and 3 misdemeanors where the offender has no prior convictions, active imprisonment is not authorized. S.L. 1997-79, effective May 22, 1997, amended G.S. 15A-1340.20 to allow the court to impose active imprisonment for a misdemeanor where the guideline grid (G.S. 15A-1340.23) would not otherwise allow it, for a term up to the amount of time the offender has already spent in confinement awaiting trial.

Felony sentencing: new and revised aggravating factors (pages 74-84)

S.L. 1997-443, sec. 19.25(w), amended G.S. 15A-1340.16(d)(6) to make clear that the aggravating factor, in felony sentencing, of committing the offense "against" a law enforcement officer, Department of Correction (DOC) employee, jailer, judge, or certain other enumerated criminal justice and emergency personnel, applies to an offense that "proximately caused serious injury to" such personnel. S.L. 1997-443, sec. 19.25(ee) added as an aggravating factor that the offense was committed for the benefit of, or at the direction of, "any criminal street gang," with the intent to promote criminal conduct by gang members. This factor does not apply if the defendant was charged with committing a conspiracy. The section defined a "criminal street gang" as any group of three or more persons having as a primary activity the commission of felonies or violent misdemeanors, or the juvenile equivalent of such offenses, and having a common name or identifying sign, colors, or symbols. These amendments apply to offenses committed on or after December 1, 1997.

Sentencing: driving while impaired (pages 97-106)

Both the 1997 and 1998 sessions enacted tougher penalties for impaired driving. S.L. 1997-379, applicable to offenses committed on or after December 1, 1997, amended G.S. 20-28.2, and added G.S. 20-28.3 through -28.7 to provide for forfeiture of the driver's motor vehicle for impaired driving that occurs after license revocation due to previous impaired driving. The 1997 legislation also provided that for all levels of DWI, if probation is imposed, the sentencing judge *must* order a substance abuse assessment plus the education or treatment required by G.S. 20-17.6, as conditions of probation as well as conditions of the restoration of the driver's license. The 1997 and 1998 revisions to G.S. 20-179 included the following:

Maximum fines doubled. S.L. 1998-182, sec. 31, applicable to offenses occurring on or after December 1, 1998, doubled all the maximum fines (for every punishment level of impaired driving) shown in Table 10 on page 103 of the book.

Level One punishment. S.L. 1997-379, applicable to offenses committed on or after December 1, 1997, raised the minimum imprisonment to 30 days, which may be imposed either as active imprisonment or a condition of special probation. The measure removed the sentencing option of shorter imprisonment followed by house arrest.

Level Two punishment. S.L. 1997-379 removed the sentencing option of two days' imprisonment followed by house arrest, leaving in place the minimum imprisonment of seven days.

Level Three punishment. S.L. 1997-379 made probation *discretionary* (rather than mandatory) for the sentencing judge. The probation, if imposed, must include at least one of the conditions specified in existing G.S. 20-179(i)(1) through (4).

Level Four punishment. S.L. 1997-379 made probation *discretionary* (rather than mandatory) for the sentencing judge. The probation, if imposed, must include at least one of the conditions specified in existing G.S. 20-179(j)(1) through (4).

Level Five punishment. S.L. 1997-379 made probation *discretionary* (rather than mandatory) for the sentencing judge. The probation, if imposed, must include at least one of the conditions specified in existing G.S. 20-179(k)(1) through (4).

Inpatient treatment and credit. S.L. 1997-339 left unchanged the provisions of G.S. 20-179(k1) allowing the sentencing judge to order that special probation confinement be served in an inpatient facility for treatment of alcoholism or substance abuse. It revised the subsection to provide that the defendant must pay for the treatment unless the trial judge orders that the costs be absorbed by the state. The measure retained the option to give credit against an active term of imprisonment for time spent in inpatient treatment, and removes the prohibition of using such credit more than once during the seven years immediately preceding the offense.

Parole. S.L. 1997-339 amended G.S. 20-179(p) to forbid parole unless the offender (1) has

obtained a substance abuse assessment; and (2) has either completed any recommended treatment or training program, or is paroled into a residential treatment program.

Sentencing to unsupervised probation. G.S. 20-179(r) requires, if certain conditions are met, that probation for impaired driving be unsupervised [i.e., not supervised by a probation officer] unless the sentencing judge finds that supervision is necessary. The conditions that make unsupervised probation presumptive are: (1) that the offender has not been convicted of impaired driving within the seven years preceding the current offense; (2) that the offense is at Level Three, Four or Five; and (3) that the offender has obtained a substance abuse assessment and completed any recommended treatment or training program (S.L. 1997-339 added this last condition).

Community service in DWI sentencing. S.L. 1997-234, effective October 1, 1997, and applicable to any person notified of a hearing concerning failure to perform community service on or after that date, amended G.S. 20-179.4(e) to require that if an offender convicted of impaired driving at Level Three, Four, or Five under G.S. 20-179(i), (j), and (k) is ordered by the court to perform community service and willfully fails to complete it, the court must revoke the offender's limited driving privilege until he or she has performed the service, and the Division of Motor Vehicles (DMV) must continue the revocation in effect until notified by the court clerk that the service is completed.

Recent Appellate Decisions

Sentencing Procedure: Plea Bargaining (page 41)

Plea agreement provision that sentences run concurrently not enforceable where statute required consecutive execution. A recent case concerned a plea agreement between the prosecution and defense which specified that the sentences in the current case were to run concurrently with sentences already being served by the defendant. However, G.S. 14-52, as it existed at the time (1989), required a sentence for burglary to run consecutively to any other sentences being served. The North Carolina Supreme Court held that the plea agreement could not be enforced and vacated the trial court's judgment, leaving the defendant the options of negotiating a different plea agreement or going to trial.[1]

Juvenile court records in adult sentencing (page 45)

SSA's provision authorizing use of juvenile record in adult sentencing does not violate prohibition of ex post facto laws. This 1998 case involved a juvenile transferred to stand trial as an adult for second-degree rape that occurred in 1995. After his conviction, the sentencing judge used as an aggravating factor a prior adjudication of delinquency for an earlier second-degree rape committed in 1993. The judge acted under the SSA's provision, G.S. 15A-1340.16(d)(18a), defining as a statutory aggravating factor that the defendant has previously been adjudicated delinquent for a felony in Class A through E. The defendant contended that because the SSA, which became effective in 1994, retroactively authorized use of the 1993 prior delinquent conduct, it violated the ex post facto clauses of the North Carolina Constitution (art. I, sec. 16) and the United States Constitution (art. I, sec. 10). The Court of Appeals rejected this argument, reasoning that (1) the SSA provision neither criminalized, nor increased the punishment for, the 1993 delinquency; and (2) the SSA went into effect in 1994, before the current (1995) offense for which the defendant was being sentenced, and thus did not affect the current offense retroactively.[2]

The Structured Sentencing Act (page 50)

SSA applies where offense begins before and ends after effective date of SSA. In this case, the defendant committed many acts of embezzlement before and after October 1, 1994, the effective date of the SSA. The issue was which law controlled sentencing, the SSA or its predecessor the FSA. The North Carolina Court of Appeals said that because the prosecutor elected to proceed with a single indictment for a single offense covering the entire period, the offense was not completed until after the SSA went into effect, and therefore the SSA applied.[3]

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[1] State v. Wall, 348 N.C. 671, 502 S.E.2d 585 (1998).

[2] State v. Taylor, 128 N.C.App. 394, 496 S.E.2d 811 (1998), rev. denied, 348 N.C. 76, 505 S.E.2d 884 (1998), appeal dismissed in part, __N.C.__, 505 S.E.2d 884 (1998), affirmed per curiam, __N.C.__, 504 S.E.2d 785 (1998).

[3] State v. Mullaney, __ N.C.App. __, 500 S.E.2d 112 (1998).

Prior convictions (pages 44-46).

Using DCI computer printout as proof of prior convictions. The Court of Appeals recently shed some light on the manner of proving prior convictions for sentencing under the SSA. Citing G.S. 15A-1340.14(f), the court held that an unverified computer printout of the defendant's criminal record from the Division of Criminal Information (DCI) was a proper basis for determining the defendant's prior convictions under both G.S. 15A-1340.14(f)(3), which authorizes use of a copy of DCI records, and G.S. 15A-1340.14(f)(4), which allows use of "[a]ny other method found by the court to be reliable." The Court of Appeals said that the computerized record contained sufficient identifying information with respect to defendant to give it the indicia of reliability. In the same case, the court held that Rule 609 of the Rules of Evidence (G.S. 8C-1), which generally prohibits use of prior convictions more than ten years old for purposes impeachment at trial, does not apply to sentencing under the SSA.[4]

Felony sentencing: computing the prior record score (pages 57-58).

Prior conviction pardoned. No prior record points can be assigned to a prior conviction for which the defendant has been pardoned, according to a recent Court of Appeals decision.[5]

Prior conviction of common law offense now defined by statute. G.S. 15A-1340.14(c) provides that points for a prior offense should be assigned on the basis of its classification at the time of the offense for which the defendant is currently being sentenced. In a case involving kidnapping committed in 1972, when it was a common law offense, the North Carolina Court of Appeals held that the current classification of kidnapping under G.S. 14-39 was applicable in determining points. The court upheld the trial judge's determination that the kidnapping in this case was equivalent to second-degree kidnapping as defined by the current statute, a Class E offense.[6]

Prior habitual felon conviction. Where a previous conviction of an offense involved sentencing the offender as a habitual felon, the Court of Appeals ruled that the correct classification of that previous conviction, for purposes of determining the prior record level in sentencing for a later felon, is the classification of the previous *offense*, rather than the classification of habitual felon *status* (which is Class C for an ordinary habitual felon, and unclassified for a violent habitual felon).[7]

Convictions in single session of district court. G.S. 15A-1340.14(d) prohibits assigning points to more than one district court conviction that occurs in a single session. Where a defendant is convicted in district court, appeals for trial de novo in superior court, and then withdraws the appeal, the date of conviction for purposes of this single-session rule is the original district court conviction date rather than the date when the case returns to district court. Therefore, the Court of Appeals held it was not error to count points for such a conviction as well as a second conviction that occurred during the session when the first case returned to district court for execution of its original judgment.[8]

Probation for conviction where points cannot be counted toward the conviction itself. The original SSA, G.S. 15A-1340.14(b)(5), did not allow any points to be counted toward convictions of any misdemeanors defined in G.S. Chapter 20 (traffic offenses) except for misdemeanor death by vehicle. This provision was amended in 1997, as explained earlier, to allow points for driving while impaired. In a case arising before the amendment, a sentencing judge counted a point not because of a prior impaired driving conviction, but rather because the defendant had been *on probation* for impaired driving at the time of his current felony. The Court of Appeals upheld this action, saying that a point can be counted for the status of probation although no points are allowed for the underlying conviction.[9] This ruling suggests that being on probation for other Chapter 20 offenses can be the basis of a prior record point, even the offenses for which conviction is not assigned any points.

Enhancement of sentencing for firearms use in Class A through E felonies (pages 64-65).

Firearms enhancement not subject to earlier FSA decisions. A 1998 Supreme Court decision, State v. Ruff,[10] involved a defendant found guilty by a jury of

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[4] State v. Rich, __N.C.App.__, 502 S.E.2d 49 (1998).

[5] State v. Clifton, 125 N.C.App. 471, 481 S.E.2d 393 (1997).

[6] State v. Rice, __ N.C.App.__, 501 S.E.2d 665 (1998).

[7] State v. Vaughn, ___N.C.App.___, 503 S.E.2d 110 (1998), discretionary review granted, __ N.C. __, Case No. 332P98 (November 5, 1998).

[8] State v. Wilkins, 128 N.C.App. 315, 494 S.E.2d 622 (1998).

[9] State v. Leopard, 126 N.C.App. 82, 483 S.E.2d 469 (1997).

[10] __ N.C. __, 505 S.E.2d 579 (1998).

first-degree kidnapping and first-degree rape. The defendant had pointed a gun in the victim's face, held the gun to the victim's side, and escorted her to his truck, after which he drove her to a field and raped her. The trial judge arrested judgment on the first-degree kidnapping, substituting a conviction of second-degree kidnapping. In sentencing for the kidnapping, the judge applied the firearms enhancement (G.S. 15A-1340.16A). The Supreme Court upheld this enhancement, reversing a Court of Appeals decision.[11] The Court of Appeals, following case law interpreting the now-repealed Fair Sentencing Act,[12] had ruled that the firearms enhancement could not be applied on the basis of acts of the defendant which formed the gravamen of a contemporaneous conviction of a joined offense (the rape). The Supreme Court emphasized that the SSA now provides the controlling law on this question, and said it was irrelevant whether firearm use was the gravamen of the accompanying rape for which the defendant was also sentenced. The court noted that G.S. 15A-1340.16A(b)(2) excludes firearms enhancement where the use of the firearm "is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony." Ruling that this exclusion did not apply, the court said: "So long as the use of a firearm is not an essential element of the underlying felony for which defendant is sentenced--here, second-degree kidnapping-- defendant's term of imprisonment for that particular felony must be enhanced by sixty months." Taken literally, this statement might be interpreted to mean that it does not matter whether firearm use is needed to prove an element of the offense for which the defendant is being sentenced (in *Ruff*, the restraint element of kidnapping). However, it seems unlikely that such a result was intended. Apparently, the defendant did not raise the "needed to prove" issue.[13]

An earlier Court of Appeals decision, State v. Brice,[14] also dealt with the firearms enhancement. In *Brice*, which involved both robbery and kidnapping subject to the SSA, the state presented evidence that the defendant's accomplice restrained one of the victims by threatening her with a firearm, ordering her to lie face down on the floor. The Court of Appeals held that this use of the firearm had been necessary to prove the restraint element of kidnapping, and therefore that it could not be used to enhance the kidnapping sentence. The Court of Appeals relied on a 1994 Supreme Court decision, State v. Beamer,[15] decided under the Fair Sentencing Act. In *Beamer*, the Supreme Court had ruled that where the state's proof of the breaking-in element of burglary had relied on the fact that the defendant and an accomplice had held a gun on the occupant to enter the home, the firearms use could not be used again as an aggravating factor. *Beamer* was based on the FSA's provision (former G.S. 15A-1340.4(a)(1)) that "[e]vidence necessary to prove an element of the offense may not be used to prove any factor in aggravation . . ." The Court of Appeals did not mention the SSA provision, G.S. 15A-1340.16A(b)(2), excluding the firearms enhancement when use of firearms was needed to prove an element of the offense.

In an earlier decision, State v. Smith,[16] the Court of Appeals took the same position, but cited the SSA provision as the basis for it. In this case, the trial judge had instructed the jury that to find the defendant guilty of manslaughter, it had to find that he intentionally killed the victim with a deadly weapon. The Court of Appeals, interpreting identical language in G.S. 14-2.2(b)(2) and 15A-1340.16A(b)(2), held that the firearm enhancement could not be based on the use of a firearm which was "needed to prove" an element of the offense. The court said: "Under these statutes, the pertinent question is whether the use of a firearm is necessary 'to prove an element,' not whether it is an actual element. The law is well-settled that when use of firearm is used to prove an element of the underlying offense, it cannot later be used to enhance the punishment for the same offense."[17] (To support this statement, the court cited decisions interpreting the former FSA provision mentioned above.)

In State v. Evans, decided shortly before State v. Smith, the defendant had robbed a restaurant manager at gunpoint; then tied her up, bound her mouth, nose, and eyes with duct tape; and pistol-whipped her. He pled guilty to armed robbery, first-degree kidnapping, and other charges. In sentencing for the kidnapping, the judge enhanced the sentence based on the use of a firearm that had also been used in the armed robbery. The Court of Appeals rejected the defendant's contention that double jeopardy applied, saying the robbery and the kidnapping were separate offenses not

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[11] State v. Ruff, 127 N.C.App. 677, 493 S.E.2d 374 (1997).

[12] State v. Westmoreland, 314 N.C. 442, 334 S.E.2d 223 (1985).

[13] State v. Ruff, __ N.C. __, ___, 505 S.E. 2d 579, 581 (1998).

[14] 126 N.C.App. 788, 486 S.E.2d 719 (1997).

[15] 339 N.C. 477, 451 S.E.2d 190 (1994).

[16] State v. Smith, 125 N.C.App. 562,, 481 S.E.2d 425 (1997).

[17] State v. Smith, 125 N.C.App. 562, 567, 481 S.E.2d 425, 427-428 (1997).

identical in their elements. The court, citing G.S. 15A-1340.16A(b)(2), also ruled that the use of a firearm was not "needed to prove" an element of the kidnapping.[18] Perhaps *Evans* can be distinguished from *Brice* in that *Evans* involved other evidence of restraint (tying up the victim and binding her mouth, nose, and eyes) in addition to the firearms display, while in *Brice*, the victim's removal was accomplished by pointing the gun at her without further use of force.

Sentencing: the habitual felon law and the violent habitual felon law (pages 65-66)

Under FSA, habitual felon status can be invoked more than once on the basis of the same prior convictions, and prior finding of the status may be used as an aggravating factor in sentencing. In this case, on the basis of the same three prior convictions the defendant was found to be, and was sentenced as, a habitual felon twice, once in 1987 and again in 1994. The Supreme Court found no problem with this "dual use," making it clear that once a defendant is declared to be a habitual felon, the status follows him or her in sentencing for subsequent felonies. Furthermore, the court held that under the FSA, a prior adjudication of being a habitual felon can be used as a nonstatutory aggravating factor in a later sentencing as a habitual felon. The court cited former G.S. 15A-1340.4(a), which allowed nonstatutory aggravating factors "that are reasonably related to the purposes of sentencing . . ."[19] It is uncertain whether this decision would be followed under the SSA, which has a similar provision (G.S. 15A-1340.16(d)(20)).

Multiple convictions in a single week, or consolidated convictions: using one for prior record points and another for habitual felon status. The Court of Appeals recently held that when multiple convictions occurred in a single week, for purposes of the SSA the trial court may count prior record points toward one of the convictions and use another one as the basis of determining that the defendant is a habitual felon.[20] (The defendant argued, unsuccessfully, that this action was invalid because G.S. 15A-1340.14(d) forbids counting points for more than one conviction occurring in a single week of superior court [that being the one with the highest point total], and because G.S. 14-7.6 forbids using a prior conviction as the basis for a habitual offender adjudication and counting prior record points toward that same conviction.) Where two convictions that had been consolidated for judgment, the Court of Appeals, citing its decision in the single-week case, upheld the use of one to establish habitual offender status and the other for prior record points.[21] The court said that despite the consolidation, the convictions remained separate convictions.

Using prior convictions as basis of habitual felon status and also for prior record points, when points were based on being on probation and on prior offense containing elements of current offense. In another case involving the habitual felon laws and the SSA, the sentencing judge used one of the three prior felonies on which habitual offender status was based to assign a prior record point, under G.S. 15A-1340.14(a)(7), because the defendant was still on probation for that prior felony at the time of the current felony. The judge used another one of the three prior felonies to assign a point, under G.S. 15A-1340.14(a)(6), on the ground that the prior felony contained all the elements of the current felony. The defendant argued that these actions violated the requirement of G.S. 14-7.6 that "[i]n determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used." The Court of Appeals, upholding the sentencing judge's actions, held that this determination of prior record points was not use of prior convictions within the meaning of G.S. 14-7.6. The court distinguished subsections (1) through (5) of G.S. 15A-1340.14(a), which base points solely on the existence of previous convictions, from subsections (6) and (7). The latter sections, the court said, primarily involve characteristics of the *current offense* (occurring while the defendant is on probation, and having elements contained in a previous offense) rather than the existence of prior convictions.[22]

Adjudication as violent habitual felon may be based on reclassified prior felonies. A defendant alleged a violation of the constitutional prohibition of ex post facto laws in that his adjudication as a violent habitual felon was based on two felonies currently assigned to Class E, which at the time he committed them were classified as Class H and F, respectively. The Court of Appeals pointed out that G.S. 14-7.7 specifically includes repealed or superseded offenses

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[18] State v. Evans, 125 N.C.App. 301, 480 S.E.2d 435 (1997), review denied, 346 N.C. 551, 488 S.E.2d 813 (1997).

[19] State v. Kirkpatrick, 345 N.C. 451, 480 S.E.2d 400 (1997).

[20] State v. Truesdale, 123 N.C.App. 639, 473 SE2d 670 (1996).

[21] State v. McCrae, 124 N.C.App. 664, 478 S.E.2d 210 (1996).

[22] State v. Bethea, 122 N.C.App. 623, 471 S.E.2d 430 (1996).

that are substantially equivalent to Class A through E offenses. The court also held that the violent habitual felon law did not increase the punishment for the prior felonies; rather, it enhanced the punishment for the defendant's current offense, which occurred after the law went into effect.[23]

The drug trafficking law (pages 66-68)

"Substantial assistance" prevails over SSA grid. In sentencing for drug trafficking, a sentencing judge found that the defendant had provided substantial assistance to the prosecution under G.S. 90-95(h)(5), but believed that he was constrained by the minimum terms set in the SSA grid (G.S. 15A-1340.17(c)). The Court of Appeals disagreed, pointing out that G.S. 15A-1340.13(b) provides that the SSA sentencing range applies "unless applicable statutes require or authorize another minimum sentence of imprisonment." In this case, the court said, the applicable statute, G.S. 90-95(h)(5), allows the sentencing judge to impose a prison term less than the G.S. 90-95(h) minimum term or to suspend the term if the judge finds substantial assistance. This means, the court held in remanding the case for resentencing, that the sentencing judge is not limited by the SSA's minimum sentencing requirements in this situation.[24]

Statutory aggravating factors (pages 74-84)

Use of prior juvenile delinquency as aggravating factor upheld. (See the discussion of this case[25] in the earlier section on the use of juvenile court records in adult sentencing.)

Aggravating factor G.S. 15A-1340.16(d)(8) (creating great risk of death to more than one person by means of weapon normally hazardous to the lives of more than one person) (page 77). In a recent case in which the defendant was sentenced for assault with a deadly weapon with intent to kill inflicting serious injury as well as five counts of assault with a deadly weapon inflicting serious injury, the sentencing judge found as a statutory aggravating factor under the SSA (G.S. 15A-1340.16(d)(8)), that the defendant had used an automatic weapon that was hazardous to the lives of more than one person. The defendant claimed that this violated the G.S. 15A-1340.16(d) bar against using in aggravation evidence that was necessary to prove an element of the offense. Rejecting this claim, the North Carolina Court of Appeals relied on an earlier decision under the Fair Sentencing Act which upheld use of the same aggravating factor.[26] The basis of that decision, which the Court of Appeals reaffirmed for purposes of the SSA, was that to prove the assault, the state only needed to prove use of a deadly weapon, not use of a weapon normally hazardous to the lives of more than one person.[27]

Aggravating factor G.S. 15A-1340.16(d)(11): "The victim was . . . very old . . ." Following decisions cited in this section of the book, the Court of Appeals, in a case under the Fair Sentencing Act, held that the mere fact that the victim's age was 73 did not establish that he was more vulnerable to a gunshot than a younger person would have been, and thus was not a sufficient basis for a finding of this factor. The court remanded the case for resentencing.[28]

Explanatory Note: Attempted Drug Trafficking

As noted in the second paragraph of this section of the book, page 66, under G.S. 90-95(i), *conspiracy* to commit drug trafficking is subject to the same mandatory minimum prison terms as is the completed offense. But what about *attempted* drug trafficking? There are no specific provisions on attempts in G.S. 90-95(h). However, G.S. 90-98 provides that except as otherwise provided in art. 5 of G.S. Chapter 90 (the Controlled Substances Act), an attempt to commit an offense defined in this article is assigned to the same class as the completed offense and is punishable as specified in art. 81B of G.S. Chapter 15A (the SSA). Thus, G.S. 90-95(h)'s mandatory minimums apparently do not apply to attempts.

Chapter 3. Modification and Correction of Sentences

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[23] State v. Mason, 125 N.C.App. 216, 480 S.E.2d 708 (1997).

[24] State v. Saunders, __ N.C.App. __, __ S.E.2d __, 1998 WL 823733 (1998).

[25] State v. Taylor, 128 N.C.App. 394, 496 S.E.2d 811 (1998).

[26] State v. Platt, 85 N.C.App. 220, 228, 354 S.E.2d 332, 336, disc. review denied, 320 N.C. 516, 358 S.E.2d 529 (1987).

[27] State v. Crisp, 126 N.C.App. 30, 483 S.E.2d 462 (1997), appeal dismissed, disc. review denied, 346 N.C. 284, 487 S.E.2d 559 (1997).

[28] State v. Deese, 127 N.C. App. 536, 491 S.E.2d 682 (1997).

[No changes]

Chapter 4. Service of Prison and Jail Sentences

Legislation in 1997 and 1998

Life imprisonment without parole (pages 133-134)

S.L. 1998-212, sec. 19.4(q), applicable to offenses committed on or after December 1, 1998, repealed G.S. 15A-1380.5 concerning judicial review of life-without-parole sentences after twenty-five years. The repealed statute, explained on p. 134 of the book, still applies to offenses committed before December 1, 1998. The repeal did not affect the power of the Governor, under art. III, sec. 5(6) of the North Carolina Constitution, to grant pardons and commutations of sentences.

Supervised release: community service; setting conditions (pages 135-137)

S.L. 1997-237, applicable to offenses committed on or after December 1, 1997, amended G.S. 15A-1368.4 to forbid the Post-Release Supervision and Parole Commission to impose community service as a condition of supervised release. The legislation further amended G.S. 15A-1368.4(c) to provide that the commission may impose "discretionary conditions" (see book, page 135) of supervised release "in consultation with the Division of Adult Probation and Parole." The legislation also revised G.S. 15A-1368.4(e) to add two "controlling conditions" (book, page 135) that the commission may impose: (1) that the supervisee remain in one or more specified places at specified times, with compliance monitored by an electronic device; and (2) that the supervisee submit to supervision by officers of the ISP.

Supervised release: computation of eligibility in multiple-sentence cases (pages 139-140)

S.L. 1997-327, applicable to offenses committed on or after December 1, 1997, clarified G.S. 15A-1368(a)(5). As revised, this statute provides that in determining the total maximum term of imprisonment for purposes of determining when an inmate is to receive supervised release, the DOC must compute the sum of all maximum terms "imposed in the court judgment *or judgments* . . ." Before this change (shown in italics), there was some doubt about whether the computation of the total maximum applied to sentences that were imposed on the inmate in different judgments, perhaps by different judges or at different times, although G.S. 15A-1354 (quoted in the text on page 139) makes it clear that the single-sentence rule covers sentences imposed at different times.

Recent Appellate Decisions

Parole (pages 151-156)

"Paper parole" held unauthorized. Parole was abolished by the SSA, but many offenders sentenced for pre-SSA offenses remain eligible for parole under former laws. The Post-Release Supervision and Parole Commission employed a procedure known as "paper parole" in some cases involving inmates serving consecutive sentences. In those cases, the commission would "parole" an inmate, without actually freeing him, after he had satisfied the requirements of one sentence, so that he could begin serving another sentence. This practice violated the requirements of the single-sentence rule, G.S. 15A-1354(b) [see examples at pages 137-144 of the book illustrating this rule's application to multiple sentences under the SSA], a statute in effect since 1978, which required the DOC to add (or "aggregate") consecutive prison terms together and treat them as a single sentence for purposes of determining time to be served.

In a case involving consecutive sentences for armed robberies in 1980, the DOC argued that special provisions of the armed robbery statute at that time required it to engage in "paper parole" despite the single-sentence rule. G.S. 14-87 at that time required that at least seven years be served before release from a sentence for armed robbery. The section also provided that "[s]entences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any (other) sentence(s) being served by the person sentenced hereunder." [Material in parentheses in this quotation was added by the Court of Appeals for clarification.] The Court of Appeals reiterated its earlier decision[29] that this provision only applied to an earlier sentence already in effect at the time of the armed robbery sentence, and not—as in this case—to multiple armed robbery sentences imposed at the same sentencing proceeding.

[29] State v. Crain, 73 N.C.App. 269, 271, 326 S.E.2d 120, 122 (1985).

(Note that although G.S. 14-87 did not *require* consecutive sentences for armed robbery sentences imposed at the same proceeding, the sentencing judge still had the discretion to make them consecutive to each other, which he did in this case.) Furthermore, the court said, G.S. 15A-1354(b), not G.S. 14-87, determines how the DOC must treat consecutive sentences once they have been imposed. Finally, the court held that the Parole Commission had no authority to engage in "paper parole." The Court of Appeals' ruling appears to apply to other similar provisions regarding consecutive sentencing for burglary (former G.S. 14-52), a repeated felony using a deadly weapon (former G.S. 14-2.2), and other offenses as discussed on pages 148-149 of the book.[30]

Explanatory Note: Credit Applied to Multiple Sentences

The paragraph beginning at the bottom of page 131 of the book and ending on page 132 is confusing and should be rewritten to read as follows:

> G.S. 15-196.1 provides that credit for previous confinement in the case "shall not include any time that is credited on the term of a previously imposed sentence to which a defendant is subject." This restriction applies to a situation in which a defendant is confined before trial on two or more pending charges. Suppose that John Jones spends 25 days in pretrial detention awaiting disposition on two charges. If he is convicted of both charges and sentenced for both at the same time, then G.S. 15-196.2 applies and credit for 25 days must be given toward both sentences if they are concurrent, or to the sum of the two sentences if they are consecutive. But suppose Jones is convicted and receives an active sentence on only one charge after 25 days of pretrial detention. That 25 days must be credited toward this first sentence. If Jones is later convicted of the other charge and receives active imprisonment, he does not receive credit for that 25 days on the second sentence. As the North Carolina Court of Appeals has interpreted the G.S. 15-196.1 restriction, the first sentence "uses up" the initial confinement of 25 days, even though this initial confinement was the result of both charges. [See State v. Lewis, cited at note 11, page 158 of the book.]

Chapter 5. Administration of Probation, Parole, and Supervised Release

Legislation in 1997 and 1998

Probation: officer's authority in setting conditions (page 167)

S.L. 1997-57, applicable to offenses committed on or after December 1, 1997, amended G.S. 15A-1343.2(e) and (f) to provide that the probation officer has the delegated authority unless the court states in the judgment that the delegation is inappropriate. Also, with regard to the electronic monitoring that the officer may impose in an intermediate punishment situation, the measure replaced "electronic monitoring" with "a curfew which requires the offender to *remain in a specified place* for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically" [emphasis added].

Chapter 6. Other Post-Conviction Matters

Legislation in 1997 and 1998

Expunction of records (pages 211-213)

S.L. 1997-138, effective June 4, 1997, amended G.S. 15A-146(a) to provide that if a person is charged with an infraction for underage purchase of alcoholic beverages at age nineteen or twenty, and the charge is dismissed or the court finds the person not responsible, the person may apply to the court to order expungement of all records relating to his or her apprehension or trial. (An infraction is an unlawful act that is not a crime and is punishable only by a fine, which in this situation is limited to $25.) The court

[30] Robbins v. Freeman, 127 N.C.App. 162, 487 S.E.2d 771 (1997), affirmed per curiam, 347 N.C. 664, 496 S.E.2d 375 (1998).

must hold a hearing and issue the order if it finds that the person has neither received an expungement previously nor been convicted of any felony.

Compensation for erroneous conviction of a felony

S.L. 1997-388 amended G.S. 148-82, -83, and -84 to limit the coverage of those statutes to persons granted a pardon of innocence by the Governor (i.e., a pardon that declares the person innocent of the charge). The pardoned person may petition the state for the pecuniary loss due to the erroneous conviction, but the petition must be filed within five years of the pardon. The petition must be addressed to the Industrial Commission (formerly, it went to the DOC and the Parole Commission). If the Industrial Commission, at a hearing, finds that a pardon of innocence was granted, it must determine the claimant's loss and enter an award for that amount, which the State Budget Director must pay. The commission must award $10,000 for each year, or pro rata portion thereof, that the claimant spent in prison on the erroneous conviction, up to a limit of $150,000. The bill also amended G.S. 105-134.6(b) to make this payment a deduction from taxable income for purposes of the state income tax. The portion of this measure affecting taxes is effective January 1, 1997; the remainder applies to persons pardoned on or after July 1, 1995.

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