Topic:
1977 LEGISLATION ON LAW AND PROCEDURE

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1977 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

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PART I: Changes Effective Before October 1, 1977

This and one or more future memoranda will summarize acts of the 1977 General Assembly that affect criminal law and procedure. This first publication concerns changes that have already gone into effect or will do so before October 1, 1977. Legislation that becomes effective on October 1 or after will be discussed in a later memorandum. Several other matters have been excluded. No discussion of the death penalty legislation appears here since most people who need to know about it have already received copies of the act. Matters relating to obscenity have been excluded because Dexter Watts is planning a separate publication on that subject. Only two of the most important motor vehicle law changes have been included. Several matters concerning jails and prisons are discussed in a section of this memorandum prepared by Steve Clarke.

For many of the matters discussed here, it seemed useful to reproduce the text of the statutory change. Those new and amended statutes are reproduced at the back of this memorandum, with repealed provisions shown by striking through previous language and new provisions shown by italics. An asterisk next to a subheading in the memorandum means that the text of the change has been reproduced. Where the new or amended statute seems self-explanatory, the discussion is kept as brief as possible.

For each bill discussed, references are given to the chapter number of the 1977 Session Laws for that enacted bill (Ch. 613, for example), to the number of the original bill that became that law (H 212, for example), and to the effective date of the legislation. If the act specified the codification of a new section of the General Statutes, we have given the section number

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stated in the act, though it should be kept in mind that the Codifier of Statutes might change that.

NEW AND AMENDED CRIMES

*Assault on officer with deadly weapon (G.S. 14-34.2). The only change is to include deadly weapons other than firearms in the kind of weapon that raises an assault on a police officer or fireman to a five-year felony.

*Picketing to obstruct justice (G.S. 14-225.1). Keep in mind that this act has no effect on picketing, parading, or using sound trucks more than 300 feet from the courthouse or residence. Whether the sound truck can be heard inside the courthouse is apparently irrelevant. It would seem difficult to prove that the picketing or parading was with the intent to "interfere with, obstruct or impede the administration of justice," since most paraders will probably say that they are trying to facilitate the administration of justice rather than impede it. However, the statute also allows prosecution if the intent is simply to "influence" a judge, juror, witness, district attorney, etc., which should be true every time there is a demonstration.

*Carrying a concealed weapon (G.S. 14-269). Note that the exemption for law enforcement officers applies only to full-time officers, and therefore adds no authority to carry weapons for auxiliary officers. Note also that the officer can carry the weapon off duty only within his territorial jurisdiction. It is not clear from the statute whether state agencies such as the Highway Patrol and SBI may file their regulations on off-duty weapons only in Wake County or whether the regulations must be sent to the clerk of court of each county. The latter would obviously be the safer course.

*Welfare and food stamp fraud (G.S. 108-48 and -110). Other than changing the punishment to make fraud of over $200 a ten-year felony, the main change in these statutes is to specify that a "provider" (presumably the social worker) can be as liable as a recipient. The wording of the statute creates some problem in prosecuting the social worker, however, since it requires that the defendant be the one to obtain the unlawful assistance. Perhaps it might be best to ignore the change in the statute and prosecute the cheating social worker as an aider and abettor.

Controlled substances. G.S. 90-89 was amended to remove dextrorphan from the list of schedule I opiates in subsection (a) and to add thiophene analog of phencyclidine to the list of hallucinogenic substances in subsection (c). The same section is also amended to add a fourth category of schedule I substances consisting of compounds, mixtures, or preparations containing substances having a depressant effect on the central nervous system. The only substance specifically listed under that category is mecloqualone. Finally, for scheule I substances, a detailed definition of peyote is added to the statute, referring to the plant classified botanically as Lophophora Williamsii Lemaire. For schedule II substances, G.S. 90-90(a) is amended to exclude nalbuphine from the list of opiums and opiates covered and to also exlude apomorphine and remove it from the list of substances under that subsection. G.S. 90-92 was amended to label the schedule IV substances

in subsection (a) as depressants and to include the salts, isomers, and salts of isomers of those named substances within the covered substances. Also, prazepam was added to the list of specific substances included in that subsection. At the same time, a fifth category of schedule IV substances was added, consisting only of dextropropoxyphene (alpha-(plus)-4-dimethyiamino-1, 2-dyphenyl-3-methyl-2-propionoxybutane). Finally, G.S. 90-101 was amended to clarify that the exemption allowing licensed physicians to possess controlled substances applies only to the extent allowed by law and by their licensing boards. All of these changes were made by Ch. 891 (H 653), which went into effect on July 1.

Furniture usury. You might not realize it, but G.S. 14-391 makes it a misdemeanor to charge too high a rate of interest on conditional sales of furniture. Ch. 807 (S 590) amended that section effective June 29 to replace the provision limiting the rate of interest to 6 per cent with a provision that the interest may not be more than "permitted by law."

Weapon of mass death and destruction (G.S. 14-288.8). That section prohibits any possession, manufacture, sale, transportation, etc., of a weapon of mass death and destruction. One part of the definition of such a weapon, contained in subdivision (c) (3), formerly included "machine guns" and "sawed-off shotguns." That subdivision has now been rewritten to read as follows: "(3) Any semiautomatic firearm capable of firing 31 rounds or more without reloading, any firearm capable of fully automatic fire, any shotgun with a barrel of less than 18 inches in length or an overall length of less than 26 inches . . . ." The change was made by Ch. 810 (S 662), effective June 29.

Pinball machines (G.S. 14-306). The last sentence of that section was amended to clarify which pinball machines are exempted from the statutes prohibiting slot machines. The change can be found in Ch. 837 (H 1365), effective June 30.

*Littering. G.S. 14-134.1 and G.S. 14-399 have been replaced with a new G.S. 14-399. Note subsection (b) of the new statute, which establishes a presumption that the operator of the vehicle or boat is the one who committed the offense when litter is thrown from it. Another provision of the act grants the Highway Patrol jurisdiction to enforce the statute.

*Unmooring boats (G.S. 14-162). The text speaks for itself.

*Throwing objects at athletic contests. This new criminal statute is reproduced at the end of the Ch. 14 offenses in the section of this memo giving the text of new statutes.

*Failure to reduce speed (G.S. 20-141). Ch. 367 (H 250) reinstates the offense of failing to reduce speed, which was repealed on January 1, 1975.

*Unauthorized use of conveyance (G.S. 14-72.2). This statute, which was held unconstitutionally vague in State v. Graham, 32 N.C. App. 601 (1977), was rewritten by Ch. 919, effective July 1. The law now requires that the conveyance be taken or operated without the express or implied

consent of the owner or person in lawful possession. In addition, the offense is no longer a lesser-included offense of larceny of a conveyance; now unauthorized use of a motorpropelled conveyance is a lesser-included offense of unauthorized use of an aircraft.

CHANGES IN PUNISHMENT

*Possession of marijuana (G.S. 90-95). Because this act contains no savings clause, the new penalties should apply to any person sentenced after the effective date of July 1 regardless of when the offense occurred.

*Second felony using deadly weapon (G.S. 14-2.1). Note that this new section does not apply unless both felonies were committed after September 1, 1977, and it does not apply unless the defendant was 21 or over when he committed the previous felony. The statute applies to felonies "where a deadly weapon was used," even though the use of the weapon may not have been an element of the offense. For example, if a defendant were convicted of assault with a deadly weapon inflicting serious injury and had a previous conviction of burglary, he would be subject to the mandatory punishment of this new section if he had used a deadly weapon in the burglary. The problem, of course, is that unless the use of a deadly weapon was an element of the offense, nothing in the record will show that use. Another problem under the new law is what sentence can be given to a person whose second felony using a weapon is G.S. 14-34.2, assault on an officer or fireman with a deadly weapon, the maximum punishment for which is only five years.

*Escape (G.S. 148-45). Instead of running concurrently with previous sentences, a sentence for escape is not to commence until the end of the previous sentence.

*Worthless Checks (G.S. 14-107). The text is self-explanatory.

PROCEDURE

*Returning seized property (G.S. 15-11.1). This new section is the first attempt at a general law for disposition of evidence before trial. Note that it does not apply when another statute sets out a procedure for disposing a specific kind of evidence, such as the ABC statutes. Note that the property need not be returned to the owner before trial; the judge or magistrate has discretion to refuse, and if the property is returned before trial an order may be issued setting any condition necessary to assure its availability at trial.

Split sentencing (G.S. 15-197.1). The split-sentencing, or special probation, statute had an expiration date of July 1, 1977, until the date was removed by Ch. 888 (H 437). The statute will continue in effect until repealed by some future session of the legislature.

Right to continuance after plea arrangement rejected. Directly reversing the holding of the North Carolina Supreme Court in State v. Williams, 291 N.C. 442 (1976), Ch. 186 (H 377), which became effective on April 12, provides that a defendant has a right to continuance until the next session of court when the judge rejects a plea arrangement under G.S. 15A-1023(b).

Nontestimonial identification notice (G.S. 15A-274). The statute requires that a nontestimonial identification order be served within 72 hours before the scheduled time for the identification procedure unless delay would be likely to adversely affect the probative value of the evidence sought. Ch. 832 (H 1206), effective June 30, also eliminates the 72-hour notice requirement when it appears likely that the person named in the order may destroy or alter the evidence or may not appear.

Defendant's incapacity to proceed (G.S. 15A-1002). Ch. 25 (S 29), effective July 1, amends the statute to provide that medical reports concerning a defendant's incapacity to proceed are not public records until introduced into evidence. A copy of the full report will be sent only to the superior court clerk and defense counsel, with only a copy of the covering statement sent to the district attorney. The presiding judge is authorized to reveal the full report under conditions set by him.

*Serving process upon unincorporated associations (G.S. 15A-773). The statute previously provided only for the method of serving a criminal summons upon a corporation charged with a crime. The revised statute provides the method for serving information, indictments, or criminal summons upon corporations, unincorporated associations, partnerships, etc.

*Bill of indictment for rape (G.S. 15-144.1). Perhaps in response to State v. Perry, 291 N.C. 586 (1977), which held a first-degree rape indictment fatally defective for failing to allege that the defendant was over 16, the new statute sets out the words sufficient to charge any degree of rape or rape of a virtuous female under 12.

Learned treatises. Ch. 1116 (H 1307), effective July 1, adopted in substance Federal Rule of Evidence 803(18), which sets forth the learned-treatise exception to the hearsay rule. The law provides that when statements in a learned treatise are called to the attention of the expert witness upon cross-examination or relied upon by him on direct examination, and the treatise is established as reliable authority by the witness's testimony or admission, other expert testimony, or by judicial notice, the statements may be read into evidence as substantive evidence. The treatise itself may not be received as an exhibit unless both parties agree.

BEER-CONSUMPTION ORDINANCES

Ch. 693 (H 470), effective June 23, authorizes units of local government--that is, cities and counties--to adopt ordinances regulating the consumption of malt beverages and unfortified wine on "property owned or occupied"

by the local government. There has been a question whether such ordinances were valid since the 1973 case from Mount Airy in which the State Supreme Court invalidated an ordinance restricting the public display or consumption of beer after the defendant had been convicted of public display. It is not altogether clear, however, what this amendment to G.S. 18A-35 accomplishes. "Property owned or occupied" by a city or county clearly includes city- and county-owned buildings, the parking lots of such buildings, buildings rented by those governments, and city- and county-owned parks. It does not include parking lots for private establishments, such as taverns. And it is hard to determine what streets may be covered by the local ordinance. A state-owned and -maintained street, even though it is the town's main street, is not property owned or occupied by the local government. Nor would a street seem to be covered if the land is still owned by the adjoining landowners and the city simply has an easement over it. A street owned and maintained by the city would be an area in which a local ordinance could be enforced. In many instances it will probably be difficult to show exactly who does own a street if the question is raised. Passage of this legislation would seem to prevent a local ordinance covering consumption of beer and wine in places other than those stated in the act.

MISCELLANEOUS

Expunging records. Two separate acts concerning expungement of records were passed. Ch. 699 (H 1026), effective June 23, is fairly technical. It amended G.S. 15-223 to specify that traffic convictions are not among the offenses allowed to be expunged under that section and to provide that if a person commits a traffic offense within two years of the previous misdemeanor offense, he may still have the prior record expunged. The other act is Ch. 642 (H 1024), effective June 21. It also amended G.S. 15-223 to clarify that the order of expungement goes to the local law enforcement agency that made the arrest; that agency sends it on to the SBI, and the SBI sends it to the FBI.

Chapter 642 also rewrites G.S. 90-96(b) concerning expungement of records of minors who are placed on special probation for misdemeanor drug possession offenses. The person seeking to have the record expunged will have to show not only that special probation has been completed successfully but also that he has not been convicted of any offense other then a traffic offense during the probationary period; he will also have to present affidavits from two persons in the community as to his good character. The same change was made in G.S. 90-113.14 concerning expungement of cannabis convictions. No change is made with regard to the person who is seeking expungement not because he has completed special probation but because he was acquitted of the drug charge or it was dismissed.

Magistrates' worthless-check jurisdiction (G.S. 7A-273(6)). The jurisdiction of magistrates to decide worthless-check cases was raised from those involving $50 checks to those involving $400 checks. The statute was also amended to specify that the chief district judge has the authority to decide what cases are to be heard by the magistrate, and apparently to direct

the judgment to be entered by the magistrate. Further, a 30-day maximum was placed on the sentence a magistrate may enter for a worthless check. These changes are in Ch. 873 (S 568), effective July 1, 1977, and apply only to actions begun on or after that date.

Restoration of citizenship (G.S. Ch. 13). Several years ago, Chapter 13 of the General Statutes was rewritten to provide for automatic restoration of citizenship for felons upon final release from state prison. Ch. 813 (S 872), effective June 29, makes essentially the same provisons applicable to those convicted of federal crimes. The clerk of court will issue the certificate of restoration of citizenship when he receives the proper papers from the federal agency that had jurisdiction over the prisoner.

Loan of police officers (G.S. 160A-288). The revision of this statute allows any city or county police department or sheriff's department to lend officers, equipment, and supplies to another such department when it receives a written request for aid. The assistance is subject to rules or policies adopted by the city or county that controls the department. No longer is the aid limited to emergencies, and no longer is it necessary for the agencies to have a prior written agreement about assistance. Nor is it necessary any longer for a record of each instance of assistance to be placed in the minutes of the city or county governing body. Nothing is said in the act about aid to or from state agencies. The legislation is Ch. 534 (H 1097), effective July 1.

Child abuse (G.S. 7A-286). Among other changes in the child-abuse laws by Ch. 786 (H 514) is a requirement that the court find that the child will receive proper care and supervision before returning him to the custody of parents from whom he was taken because of abuse or neglect. The act went into effect on June 19.

Wound-reporting law. Ch. 31 (S 6) and Ch. 843 (S 427), both effective July 1, added the following counties to the wound-reporting law (Ch. 4, SL 1971): Avery, Beaufort, Buncombe, Craven, Davidson, Davie, Durham, Forsyth, Gaston, Guilford, Hertford, Hyde, Iredell, Martin, Mecklenburg, Montgomery, Onslow, Polk, Randolph, Robeson, Rockingham, Rowan, Stanly, Stokes, Surry, Union, Wake, and Wayne. The law previously applied only to Alamance and New Hanover counties. Ch. 843 also amended the law to delete the reporting requirement for illness apparently caused by illegal drug usage.

Access by defense attorney to P.I.N. Ch. 836 (H 1352), effective June 30, amends G.S. 114-10.1 to provide that the regulations governing access to the Police Information Network "shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding."

Motor vehicle habitual offender law repealed. Ch. 243 (H 72) effective April 25, repealed the motor vehicle habitual offender law (Art. 8 of Ch. 20). Since there was no savings clause, all pending prosecutions are abated.

BILLS AFFECTING PRISONS AND JAILS

(Note: This portion of the memorandum was written by Steve Clarke; questions on these matters should be directed to him.)

Jails must take more sentenced prisoners. Even though most prison overcrowding and population growth is occurring in the medium-custody (primarily felon) population, some thinking has focused on getting some of the minimum-custody (primarily misdemeanant) population out of prison. One idea has been to house these offenders in local jails. Ch. 450 (S 530), amended by Ch. 925, effective July 1, 1977, amends G.S. 148-30 to provide that no male misdemeanant may be sentenced to the state prison system unless his total term exceeds 180 days. Formerly, the limiting figure was 30 days or more. The bill seems to permit commitment of a felon to prison for 180 days or less. (Although present law apparently allows commitment to jail for sentences over 180 days [see G.S. 15-6] most longer sentences are to state prisons.) The Criminal Code Commission bill (Ch. 711, S 239, effective July 1, 1978) will repeal G.S. 148-30 entirely and allow no offender--misdemeanant or felon--to be sentenced to the Department of Correction for less than 180 days. These two bills pose a challenge for jail administrators, who have little experience with sentenced prisoners. Until now, jails have been used primarily to hold defendants before trial when they cannot meet bail conditions. Ch. 450 may help counties to bear the added financial burden of extra prisoners by providing that the Secretary is "authorized and empowered"--but not required--to contract with local governments to pay the "cost of food, clothing, personal items, supervision and necessary medical services" for prisoners serving 30 to 180 days. However, no state funds were appropriated for this purpose. (Apparently this provision was not intended to facilitate any transfer to local custody of state prisoners serving 30 to 180 days before the act became effective.)

If a jail becomes filled to capacity, or "cannot reasonably accommodate any more prisoners due to segregation requirements, for particular prisoners" (e.g., a jail may not be completely full, but its space designated for handling sentenced or dangerous prisoners may be full), then Ch. 450 allows the jailer to certify this fact to the clerk of superior court; any judge in the judicial district may then order surplus prisoners transferred to another jail in the district, or if there is none, to the Department of Correction (the latter does not apply to prisoners serving less than 30 days).

Jail prisoners' parole and work release. G.S. 143B-266(a) gives the Parole Commission authority to grant parole to "persons held by virtue of any final order of judgment of any court of this State," which includes sentenced prisoners in jails as well as in state prisons. As a practical matter, few sentenced jail prisoners are paroled because of thier very short sentences (almost all under 30 days). Ch. 450, mentioned in the previous subsection, requires that when a prisoner enters jail with a sentence of 30 to 180 days, the court clerk must forward the commitment order to the Parole Commission so that the prisoner will "be eligible" for parole (actually, the prisoner would in any case "be eligible," but notifying the Commission will enable

it to consider his case). The act also amends G.S. 148-33.1 to give local jailers the same authority the Secretary of Correction now has to grant work release to sentenced prisoners in their custody.

More misdemeanants eligible for parole at one-third. G.S. 148-60.3 requires parole after one-third of the sentence has been served for a misdemeanant serving a total of less than 12 months, unless the Parole Commission finds it likely that he will violate the law or threaten social welfare if paroled. Ch. 450 amends this, making the requirement of parole at one-third apply to "every misdemeanant serving a minimum sentence of 30 days or serving a maximum sentence of less than 12 months." The effect may be unintentional, but a logical interpretation of the phrase as amended is that all misdemeanants in prison or jail serving 30 days or more are subject to the parole at one-third rule. Ch. 624 (H 1145), effective June 20, 1977, further amends G.S. 148-60.3 by exempting only committed youthful offenders, and not all youthful offenders, from the one-third rule.

Work release. Present G.S. 148-33.1(a), in a provision added in 1975, requires the Department of Correction to issue temporary work release privileges immediately to any prisoner whose term does not exceed five years, upon recommendation of the sentencing judge, as soon as the prisoner's employment can be verified. The purpose of this provision was to avoid delays in processing work release approval that could cost an offender a job he had when he was convicted. Ch. 623 (H 1144), effective July 1, 1977, allows this immediate work release to be granted only if the job is in an area where the Department has facilities to which the offender "may suitably be assigned," and if "custodial and correctional considerations would be adverse to granting work release." The act also prohibits recommendation of work release by the sentencing judge when he imposes probation but allows the recommendation if probation is later revoked and the offender sent to prison.

NOTE: In this compilation of statutes, portions typed in regular type (regular type) are unchanged; portions typed in italic type *(italic type)* are new; and portions struck through (~~struck through~~) have been repealed.

§ 14-2.1. *Punishment of felonies; second or subsequent offenses.*--*Notwithstanding the provisions of G.S. 15-197, or any other provisions of law, any person who has been previously convicted of a felony where a deadly weapon was used in the commission of the crime in the courts of this State, upon conviction of a second felony where a deadly weapon was used in the commission of the crime within seven years of the date of the previous felony conviction, provided that the previous felony did not occur within 10 days of the second felony, shall be sentenced to imprisonment for a minimum period of seven years and shall, in every instance, serve the first seven calendar years of his sentence without benefit of parole, probation, suspended sentence, or any other judicial or administrative remedy for release from incarceration. Such term will be computed allowing credit for good behavior, credit for time served while incarcerated awaiting trial, and such other provisions as the Secretary of Correction might make pursuant to G.S. 148-11. Upon completion of service of such term, the prisoner will be eligible to have his case considered for parole if the requisites of G.S. 148-58 regarding time served have been satisfied. The power of the Governor to grant commutations, pardons, and reprieves, and the power of the courts to grant appropriate relief under Article 22 of the General Statutes Chapter 15 will not be affected by the provisions of this section.*

For the purpose of this section, the record or records of the prior felony conviction shall be admissible in evidence after conviction and before sentencing, but only for the purpose of proving that said person has been

convicted of a previous felony. A judgment of a conviction or plea of guilty to such felony offense certified to a superior court of this State from the custodian of records of any other court of this State under the same name as that by which the defendant is charged shall be prima facie evidence of the facts so certified.

For the purpose of this section, felonies committed before a person attains the age of 21 years shall not constitute a previous felony conviction.

Pleas of guilty to or convictions of felony offenses prior to September 1, 1977, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon.

[Ch. 1131 (S 832), effective September 1, 1977]

§ 14-34.2. Assault with a firearm *or other deadly weapon* upon law enforcement officer or fireman.--Any person who shall commit an assault with a firearm *or any other deadly weapon* upon any law enforcement officer or fireman while such officer or fireman is in the performance of his duties shall be guilty of a felony and shall be fined or imprisoned for a term not to exceed five years in the discretion of the court.

[Ch. 829 (H 1009), effective July 1, 1977]

§ 14-72.2. Unauthorized use of a *motor-propelled* conveyance.--(a) A person is guilty of an offense under this section if, without the *express or implied* consent of the owner *or person in lawful possession*, he takes *or*

operates~~, or exercises control over~~ an aircraft, motorboat, motor vehicle, or other motor-propelled conveyance of another.

~~(b) Consent may not be presumed or implied because of the consent of the owner on a previous occasion to the taking, operating, or exercising control of a conveyance given to the person charged or to another person.~~

~~(c)~~ *(b)* Unauthorized use of an aircraft is a felony punishable by a fine, imprisonment not to exceed five years, or both, in the discretion of the court. All other unauthorized use of a *motor-propelled* conveyance is a misdemeanor punishable by a fine, imprisonment not to exceed two years, or both, in the discretion of the court.

~~(d) An offense under this section may be treated as a lesser included offense of the offense of larceny of a conveyance.~~

(c) Unauthorized use of a motor-propelled conveyance shall be a lesser-included offense of unauthorized use of an aircraft.

~~(e)~~ *(d)* As used in this section, "owner" means any person with ~~an~~ *a property* interest in ~~property such that it is property of another as far as the person accused of the offense is concerned~~ *the motor-propelled conveyance.*

[Ch. 919 (S 660), effective July 1, 1977]

§ 14-107. Worthless checks.--[The first three paragraphs of this section are unchanged]

Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished as follows:

[Subparagraphs (1) and (2) are unchanged]

(3) If such check or draft is drawn upon a non-existent account, the punishment shall be by a fine not to exceed one thousand dollars ($1,000) or imprisonment for not more than two years, or both.

(4) If such check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the punishment shall be a fine not to exceed four hundred dollars ($400.00), or imprisonment for not more than five months or both.

[Ch. 885 (S 911), effective August 1, 1977]

§ 14-162.--Removing boats ~~or their fixtures and appliances~~.--If any person ~~shall take away from any landing or other place where the same shall be, or~~ shall loose, unmoor, or turn adrift from ~~the same~~ *any landing or other place wherever the same shall be,* any boat, canoe, ~~pettiaugua,~~ *or other marine vessel,* ~~oars, paddles, sails or tackle belonging to or in the lawful custody of any person;~~ or if any person shall direct the same to be done without the consent of the owner, or the person having the *lawful* custody or possession of such ~~property~~ *vessel,* he ~~shall forfeit and pay to such owner, or person having the custody and possession as aforesaid, the sum of two dollars,~~ ~~and~~ shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding ~~fifty~~ *five hundred* dollars *($500.00),* ~~or imprisoned not exceeding thirty days~~ *imprisonment for not more than six months or both* ~~in the discretion of the court~~. The owner may also have his action for such injury. The penalties aforesaid shall not extend to any person who shall press any such property by public authority.

[Ch. 729 (H 325), effective June 24, 1977]

§ 14-225.1. Picketing or parading.--Any person who, with intent to interfere with, obstruct, or impede the administration of justice, or with intent to influence any justice or judge of the General Court of Justice, juror, witness, district attorney, assistant district attorney, or court officer, in the discharge of his duty, pickets, parades, or uses any sound truck or similar device within 300 feet of an exit from any building housing any court of the General Court of Justice, or within 300 feet of any building or residence occupied or used by such justice, judge, juror, witness, district attorney, assistant district attorney, or court officer, shall upon plea or conviction be guilty of a misdemeanor and imprisoned for not more than two years or fined not more than one thousand dollars ($1000), or both.
[Ch. 266 (H 77) effective July 1, 1977]

§ 14-269. Carrying concealed weapons.--If anyone, except when on his own premises, shall willfully and intentionally carry concealed about his person any bowie knife, dirk, dagger, sling shot, loaded cane, brass, iron or metallic knuckles, razor, pistol, gun or other deadly weapon of like kind, he shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both. This section shall not apply to the following persons: Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the State guard when called into actual service, officers of the State, or of any county, city, or town, charged with the execution of the laws of the

State, when acting in the discharge of their official duties. , *provided, however, full-time sworn law enforcement officers may carry a concealed weapon when off-duty in jurisdiction where assigned if so authorized by written regulations of the law enforcement unit, which must be filed with the Clerk of Court in the county where the law enforcement unit is located, provided further, that no such regulation shall permit the carrying of a concealed weapon while the officer is consuming or under the influence of intoxicating liquor.*

[Ch. 616 (H 621), effective June 20, 1977]

§ 14-399. Littering.--(a) No person, firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will

be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is so blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense.

(c) As used in this section, the word 'litter' shall be defined as any rubbish, waste material, cans, refuse, garbage, trash, debris, dead animals or discarded materials of every kind and description; the word 'vehicle' shall be defined as in G.S. 20-4.01 (49); and the word 'watercraft' shall be defined as any boat or vessel used for transport upon or across the water.

(d) A violation of this section is a misdemeanor punishable by a fine of not more than two hundred dollars ($200.00).

[Ch. 887 (H 423), effective July 1, 1977]

Uncodified Section

It shall be unlawful for any person to throw, drop, pour, release, discharge, expose or place in an area where an athletic contest or sporting event is taking place any substance or object that shall be likely to cause injury to persons participating in or attending such contests or events or to cause damage to animals, vehicles, equipment, devices, or other things used in connection with such contests or events. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than 30 days, or both, in the discretion of the court.

[Ch. 772 (H 1139), effective July 1, 1977]

§ 15-11.1. Seizure, custody and disposition of articles; exceptions.--

(a) If a law enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application to the court by the lawful owner or a person, firm, or corporation entitled to possession, after notice to all parties, including the defendant, and after hearing, the court may in its discretion order any or all of the property returned to the lawful owner or a person, firm, or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

(b) In the case of unknown or unapprehended defendants or of defendants wilfully absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem, who shall be a licensed attorney, to represent and protect the interest of such unknown or absent defendants. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith.
[Ch. 613 (H 212), effective June 20, 1977]

§ 15-144.1. Essentials of bill for rape.--(a) In indictments for rape it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the offense of rape was allegedly committed, and the averment "with force and arms", as is now usual, it is sufficient in describing rape to allege that the accused person unlawfully, wilfully, and feloniously did ravish and carnally know the victim, naming her, by force and against her will and concluding as is now required by law. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for rape in the first degree and will support a verdict of guilty of rape in the first degree, rape in the second degree, assault with intent to commit rape or assault on a female.

(b) If the victim is a virtuous female child under the age of twelve years it is sufficient to allege that the accused unlawfully, wilfully, and feloniously did carnally know and abuse a virtuous child under twelve, naming her, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for the rape of a virtuous female child under the age of twelve years and all lesser included offenses.
[Ch. 861 (S 842), effective July 1, 1977]

§ 15A-773. ~~Corporate defendants;~~ securing attendance *of organizations;* appearance.--(a) The court attendance of ~~a corporation~~ *an organization* for purposes of commencing or prosecuting a criminal action against it may be accomplished by:

(1) ~~the~~ issuance of service of a criminal summons~~;~~ *or*

(2) issuance of an information and waiver of indictment by an authorized officer or agent of the organization and by counsel for the organization, as provided in G.S. 15A-642(c); or

(3) service of the notice of the indictment, as provided in G.S. 15A-630.

The criminal summons *or notice of indictment* must be directed to the ~~corporation~~ *organization,* and must be served ~~upon the corporation~~ by delivery ~~thereof~~ to an officer, director, managing or general agent, cashier or assistant cashier of ~~such corporation~~ *the organization,* or to any other agent of ~~such corporation~~ *the organization* authorized by appointment or by law to receive service of process.

(b) At all stages of a criminal action, ~~a corporate defendant~~ *an organization* may appear by counsel or agent having authority to transact the business of the ~~corporation~~ *organization.*

(c) For purposes of this section, "organization" means corporation, unincorporated association, partnership, body politic, consortium, or other group, entity, or organization.

[Ch. 557 (S 658), effective June 13, 1977]

§ 20-141. Speed restrictions.--[Subsections (a) through (l) unchanged]

(m) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the operator of a vehicle from the duty to decrease speed as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, and to avoid injury to any person or property.

[Ch. 367 (H 250), effective July 1, 1977]

§ 90-95. Violations; penalties.--(a) Except as authorized by this Article, it is unlawful for any person:

. . .

(3) To possess a controlled substance.

. . .

(d) Any person who violates G.S. 90-95(a)(3) with respect to:

. . .

(4) A controlled substance classified in Schedule VI shall be guilty of a misdemeanor and shall be ~~sentenced to a term of imprisonment of not more than six months or~~ fined not more than ~~five~~ *one* hundred dollars (~~$500.00~~ *$100.00*) ~~or both in the discretion of the court~~; but if the quantity of the controlled substance exceeds one ounce (avoirdupois) of marijuana or one tenth of an ounce (avoirdupois) of extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated form the resin of marijuana,

the violation shall be a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars ($5,000), or both in the discretion of the ccurt.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

. . .

(7) If any person commits an offense under this Article for which the prescribed punishment includes only a fine, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court.

. . . .

[Ch. 862 (H 1325), effective July 1, 1977]

§ 108-48. Fraudulent misrepresentation.--*(a)* Any person *whether provider or recipient* who wilfully and knowingly~~,~~ with the intent to deceive~~,~~ makes a false statement or representation or fails to disclose a material fact *and as a result of making a false statement or representation or failing to disclose a material fact* ~~in order to enable himself or another person to~~ obtains

attempts to obtain, or ~~to~~ continues to receive public assistance to which he *or any other person* is not entitled *in the amount of not more than two hundred dollars ($200.00)* is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(b) Any person whether provider or recipient who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, attempts to obtain, or continues to receive public assistance to which he is not entitled in an amount of more than two hundred dollars ($200.00) is guilty of a felony, and upon conviction or plea of guilty shall be punished as in cases of larceny.

[Ch. 604 (H 1032), effective July 1, 1977]

NOTE: This and the next section relate to welfare fraud.

§ 108-110. Penalties for false representation.--(a) Whoever *whether provider or recipient* knowingly obtains or attempts to obtain or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation *or by failing to disclose material facts* or in any manner not authorized by this Article or the regulations issued pursuant thereto, any food coupons to which he is not entitled ~~or food coupons of a greater value than that to which he is justly entitled~~ *in the amount of two hundred dollars ($200.00) or less* shall be guilty of a mis-

demeanor and upon conviction or plea of guilty shall be fined or imprisoned or both ~~in~~ *at* the discretion of the court. *Whoever knowingly obtains or attempts to obtain or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this article or the regulations issued pursuant thereto, any food coupons to which he is not entitled in any amount more than two hundred dollars ($200.00) shall be guilty of a felony and shall be punished as in cases of larceny.*

[Subsections (b), (c) and (d) were not changed]

[Ch. 604 (H 1032), effective July 1, 1977]

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.--

[Subsections (a) through (d) are unchanged]

(e) ~~Unless otherwise specifically ordered by the presiding judge,~~ any term of imprisonment imposed hereunder shall ~~run concurrently with all former sentences remaining to be served~~ *commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person. Persons charged with the offense of escape or attempt to escape under the provisions of this section shall not be entitled to plea conference consideration as provided in G.S. 15A-1021.*

[Subsections (f) and (g) are unchanged]

[Ch. 745 (H808), effective June 27, 1977]