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Smurfing Soon: Money Laundering Under G.S. 14-118.8

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I. Introduction

A. A Factual Basis

In July 2021, Jose Pardo ("Defendant") and Emily Lawrence entered a Best Buy in Morehead City. Defendant went to a kiosk located toward the center of the store to buy a cell phone. He placed his black bag in a customer chair and his drink on the table. Defendant removed $1,300 from his bag and handed it to the sales associate to pay for a phone. Around this time, police officers

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detained Lawrence at the exit door upon suspicion of a prior theft. Observing the officers detain Lawrence, Defendant abruptly walked away from the kiosk, leaving his bag in the chair and the sales associate holding his $1,300. A subsequent search of his bag revealed narcotics and about $65,000 in cash.[1]

Pardo was indicted for drug trafficking. He filed a pretrial motion to suppress evidence, alleging a violation of his constitutional rights in the search of his bag. The trial court denied the motion, and Pardo pled guilty. The trial court entered two judgments for trafficking in methamphetamine. It assessed no costs, fines, or fees. Nevertheless, it ordered all monies docketed as a civil judgment.[2] There is no indication in the subsequent opinion of the North Carolina Court of Appeals what became of the cash.[3] Had the same scenario occurred in 2025, Pardo might have been prosecuted for money laundering.

B. Money Laundering

In general, the term "money laundering" refers to transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.[4] In North Carolina, however, the crime of money laundering is defined more broadly to include activities beyond disguising the source of dirty money. Under Chapter 14, Section 118.8 of the North Carolina General Statutes [hereinafter G.S.], a person commits money laundering if he or she knowingly and willfully, among other things, merely possesses the proceeds of criminal activity.[5] The same statute prescribes seven categories of conduct that, if undertaken with the requisite mental state and involving proceeds or funds of a certain amount, constitute the crime of money laundering.[6]

Enacted in 2024, North Carolina's money laundering statute criminalizes a wide range of conduct, making it difficult to summarize the essential elements of the offense. Further, G.S. 14-118.8 includes several relatively untested mechanisms: one provision permits aggregation, allowing transactionally related conduct to be considered "as one offense," while another declares that each violation is a separate offense, precluding merger.[7] One provision recognizes a *mens rea* (i.e., mental state) defense, while another disallows a common law defense to conspiracy.[8] A few provisions incorporate by reference other statutory provisions existing elsewhere in state or

1. State v. Pardo, 301 N.C. App. 112, 113–16 (2025).

2. *See* Record on Appeal, *Pardo*, No. COA24-1036 (N.C. Ct. App.), https://www.ncappellatecourts.org/show-file.php?document_id=364479; *see also* Jamie Markham, *No Authority for Immediate Civil Judgments on Criminal Costs and Fines*, N.C. Crim. L. Blog (Oct. 9, 2025), https://nccriminallaw.sog.unc.edu/2025/10/09/no-authority-for-immediate-civil-judgments-on-criminal-costs-and-fines/.

3. The Court of Appeals upheld the denial of Pardo's motion to suppress, concluding that he intentionally abandoned his bag at the kiosk and relinquished any reasonable expectation of privacy in it. *Pardo*, 301 N.C. App. at 124.

4. *Money-laundering*, Black's Law Dictionary 1203 (12th ed. 2024); *cf.* Shuping Li, *Banks' Provision of State Capacity: Reframing the Baseline of Banks' Anti-Money Laundering Obligations*, 23 Wake Forest J. Bus. & Intell. Prop. L. 295, 296 (2023) ("the process by which illegal funds and assets are converted into legitimate funds and assets."); Mariano-Florentino Cuéllar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. Crim. L. & Criminology 311, 312 (2003) ("To launder money is to hide its illegal origin."); Scott Sultzer, *Money Laundering: The Scope of the Problem and Attempts to Combat It*, 63 Tenn. L. Rev. 143, 145 (1995) ("the process of taking the proceeds of criminal activity and making it appear legal").

5. G.S. 14-118.8(b)(1).

6. G.S. 14-118.8(b).

7. G.S. 14-118.8(g) (aggregation); (h) (merger).

8. G.S. 14-118.8(d) (defense); (i) (conspiracy).

federal law.[9] Despite this complexity, G.S. 14-118.8 contains no provisions for how to plead or prosecute the offense of money laundering, leaving some questions unanswered.[10] This bulletin explores the provisions of G.S. 14-118.8, with a view toward illuminating the offense of money laundering in North Carolina.

II. Sources

Money laundering was a crime under federal law and the law of many other states prior to North Carolina's enactment of G.S. 14-118.8.[11] The term has been attributed to the activity of Al Capone, who allegedly used launderettes to disguise the source of funds from illegal alcohol sales during Prohibition.[12] Still, the first judicial use of the term did not occur until 1982,[13] and "it was not until the late 1980s that [money laundering] became a criminal offense."[14] Indeed, the United States was the first country to make money laundering a crime.[15] The federal offense dates from 1986.[16] And a model money laundering statute was promulgated by presidential commission in 1993.[17]

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9. "Financial institution" is as defined in G.S. 14-119 or 31 U.S.C. § 5312. G.S. 14-118.8(a)(2). "Insurer" is defined as in G.S. 58-1-5. G.S. 14-118.8(a)(4). Forfeiture proceedings are as set forth in G.S. 14-2.3 or 75D-5. G.S. 14-118.8(f).

10. *Cf.* G.S. 15A-1340.16F(d) (pleading); (e) (procedure).

11. 18 U.S.C. §§ 1956 (laundering of monetary instruments); 1957 (engaging in monetary transactions); *see also* United States v. Santos, 553 U.S. 507, 534 (2008) (Alito, J., dissenting) (collecting state statutes).

12. *See* Adriana Castanon Moreira Da Silva, *NFTs and Money Laundering*, 44 Rev. Banking & Fin. L. 275, 289 n.77 (2025); Gabriel J. Greenbaum, *What to Do with All This Green: Using Casino Regulations as a Model for Cannabis Industry Banking*, 58 Washburn L.J. 217, 230 n.98 (2019); Brigitte Unger, *Money Laundering Regulation: From Al Capone to Al Qaeda*, *in* Research Handbook on Money Laundering 19 (2013). This origin of the term is disputed. *See* Roberto Durrieu, Rethinking Money Laundering & Financing of Terrorism in International Law: Towards a New Global Legal Order 14 (2013) ("myth making"); Robert J. Olejar, *Anti-Money Laundering v. the Right to Privacy*, 2008 N.J. Law. (N.J. State Bar Ass'n, New Brunswick, N.J.), Apr. 2008, at 56, 59 ("a myth").

13. United States v. $4,255,625.39, 551 F. Supp. 314, 325 (S.D. Fla. 1982), *aff'd*, 762 F.2d 895 (11th Cir. 1985).

14. Durrieu, *supra* note 12, at 14.

15. Angel L. Rodriguez Santiago, *New Payment Methods and Insufficiencies in Their Regulatory Scheme*, 7 J.L. & Cyber Warfare 101, 110 (2019) ("the first country in the world"); Eric J. Gouvin, *Bringing Out the Big Guns: The USA Patriot Act, Money Laundering, and the War on Terrorism*, 55 Baylor L. Rev. 955, 967 (2003) ("one of the first countries in the world"); Daniel W. Drezner, *On the Balance Between International Law and Democratic Sovereignty*, 2 Chi. J. Int'l L. 321, 330 (2001) ("the first country").

16. Title 18, Section 1956 of the U.S. Code makes it a crime to conduct a financial transaction knowing the property involved represents the proceeds of specified unlawful activity; Section 1957 makes it a crime to engage in a monetary transaction of a value of more than $10,000 knowing the property is derived from specified unlawful activity. *See* Emily J. Lawrence, *Let the Seller Beware: Money Laundering, Merchants and 18 U.S.C. §§ 1956, 1957*, 33 B.C. L. Rev. 841, 845 (1992).

17. President's Commission on Model State Drug Laws: Economic Remedies app. C (White House Dec. 1993) [hereinafter Model Act]. Appendix C of this report identifies twenty-one states that had money laundering statutes as of 1993.

The term "money laundering" first appeared in North Carolina caselaw in 2003 with reference to the federal offense.[18] In one case, an attorney's conviction for the federal offense, among others, supported an order of discipline from the state bar.[19] In another case, prior to the adoption of G.S. 14-118.8, the defendant's money laundering, i.e., transferring ill-gotten gains through legitimate accounts, supported a conviction for aiding and abetting obtaining property by false pretenses.[20]

Before 2024, money laundering was barely mentioned in the North Carolina General Statutes. One instance appears in Chapter 75D, the Racketeer Influenced and Corrupt Organizations (RICO) Act.[21] That chapter authorizes the Attorney General to institute a civil RICO forfeiture proceeding against property involved in racketeering activity.[22] Racketeering activity is defined to include any act chargeable by indictment under G.S. Chapter 90, Article 5 (controlled substances) or Chapter 14 (criminal law) with certain exceptions, racketeering activity as defined in 18 U.S.C. § 1961(1),[23] and any conduct involved in a money laundering activity, presumably as defined by federal law.[24]

Section 14-118.8, making money laundering a crime under North Carolina state law, was enacted by the General Assembly in June 2024 and made applicable to offenses committed on or after December 1, 2024.[25] At the same time, G.S. 75D-3 was amended to clarify that racketeering activity for RICO civil forfeiture includes money laundering activity covered by G.S. 14-118.8.[26] The same legislation also revised certain larceny laws. Significantly, it eliminated the reference to a "fence" in Chapter 14, Article 16A, conduct that might now be prosecuted as money laundering.[27]

III. Parties

Although the prosecution of corporations is more common in federal court, organizations such as corporations, partnerships, and associations can be prosecuted for crimes in North Carolina state court.[28] The word "organization" with reference to a party appears only once

18. *See* Belk v. Cheshire, 159 N.C. App. 325, 329 (2003).

19. *See* N.C. State Bar v. Wood, 209 N.C. App. 454, 455 (2011) (defendant was convicted of six counts of mail fraud, conspiracy to commit mail fraud and wire fraud, and conspiracy to commit money laundering).

20. *See* State v. Estes, 186 N.C. App. 364, 370 (2007).

21. The term also appears in Chapter 53, Regulation of Financial Services, at G.S. 53-208.45(a)(8) (license application); 53-208.56(2)d.1. (denial of license based on prior conviction); 53-244.060(2)b. (same).

22. G.S. 75D-5; *see also* State *ex rel.* Thornburg v. Lot & Bldgs. at 800 Waughtown St., 107 N.C. App. 559, 562 (1992).

23. This includes, among other things, any murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or certain drug offenses punishable by imprisonment for more than one year. 18 U.S.C. § 1961(1).

24. G.S. 75D-3(8); *cf.* 18 U.S.C. § 1956; 18 U.S.C. § 1957; *see also infra* Section VII.C.

25. An Act to Criminalize Money Laundering and to Revise Certain Larceny Laws, S.L. 2024-22, § 1.(a).

26. S.L. 2024-22, § 1.(b).

27. S.L. 2024-22, §§ 2.(a) (amending G.S. 14-86.5); 2.(b) (amending G.S. 14-86.6). The same legislation also made fraudulent transfer of a price tag, product code, or other price mechanism in excess of $200 a Class H felony for a first offense under G.S. 14-72.1 (concealment of merchandise), and it created several new forms of larceny from a merchant, all involving a fraudulent product code or other price mechanism, under G.S. 14-72.11. *See id.* §§ 2.(c); 2.(d).

28. *E.g.*, State v. Sanford Video & News, Inc., 146 N.C. App. 554 (2001).

in G.S. 14-118.8.[29] Court attendance in such cases may be accomplished by service of a criminal summons or notice of indictment upon an authorized agent of the organization.[30] An organization may appear by counsel or authorized agent.[31] A guilty plea may be entered by counsel or a corporate officer.[32] And when the defendant is other than an individual, the judgment may consist of a fine only.[33]

IV. Elements

"A person commits the offense of money laundering if the person . . . [1] knowingly and willfully [2] does any of the following [seven categories] [3] involving proceeds of criminal activity or funds that alone or aggregated . . . exceed ten thousand dollars."[34] The offense thus contains components that may be classified as *mens rea* (i.e., mental state) elements, *actus reus* (i.e., action or conduct) elements, and elements regarding the proceeds in question (i.e., nature and value of the funds). Each of these parts is addressed in turn.

A. *Mens Rea* Elements

The term "mens rea" refers to the state of mind that the State must prove the defendant had when committing a crime.[35] A defendant's state of mind is seldom proven with direct evidence but must ordinarily be proven by circumstantial evidence from which it may be inferred.[36] "Courts have long permitted the subjective mental state of people to be inferred from their conduct."[37]

A number of *mens rea* provisions appear throughout G.S. 14-118.8. In the first place, for all of the seven categories of prohibited conduct, the State must prove that the defendant committed the act "knowingly and willfully."[38] In addition, "[k]nowledge of the nature of the criminal activity giving rise to the proceeds is required to establish a culpable mental state[.]"[39] For two of the categories, the State must prove the contents of the defendant's belief about funds.[40] And three of the seven categories include a specific intent requirement.[41] Each of these components is addressed in turn.

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29. G.S. 14-118.8(b).

30. G.S. 15A-773(a). An authorized officer or agent of the organization and counsel may waive indictment. *Id.* § 773(a)(2).

31. G.S. 15A-773(b).

32. G.S. 15A-1011(a)(1).

33. G.S. 15A-1340.17(b). It is unclear how this affects forfeiture under G.S. 14-118.8(f). *See also infra* Section VII.C.

34. G.S. 14-118.8(b).

35. State v. Barnes, 229 N.C. App. 556, 560 (2013), *aff'd per curiam*, 367 N.C. 453 (2014).

36. *E.g.*, State v. Gillard, 386 N.C. 797, 832 (2024); State v. Sexton, 357 N.C. 235, 238 (2003).

37. State v. Holloway, 69 N.C. App. 521, 526 (1984).

38. G.S. 14-118.8(b).

39. G.S. 14-118.8(c).

40. G.S. 14-118.8(b)(3) ("funds that the person believes are the proceeds of criminal activity"); (b)(4) ("funds that the person believes are intended to further the commission of criminal activity").

41. G.S. 14-118.8(b)(5) ("with the intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds"); (b)(6) ("with the intent to promote, in whole or in part, the commission of criminal activity"); (b)(7) ("with the intent to avoid a transaction reporting requirement").

1. Knowingly and Willfully

A person commits money laundering under G.S. 14-118.8 if the person does any of the prescribed seven categories of prohibited conduct "knowingly and willfully."[42]

The word "knowingly" means that the defendant was aware of what he or she was about to do and with such knowledge proceeded to do the act charged.[43] When a crime requires subjective knowledge, the element cannot be established by showing that the defendant acted with willful blindness.[44] Rather, knowledge must generally be proved by circumstantial evidence.[45] The jury may infer knowledge from all the circumstances presented by the evidence, including the conduct and statements of the defendant, statements made to the defendant by others, and evidence of reputation which it may be inferred had come to his or her attention, among other things.[46] When guilty knowledge is an issue, any facts tending to prove the defendant's guilty knowledge may be offered against him or her.[47]

The word "willful," when used in a criminal statute, means something more than an intention to do a thing.[48] Willfulness requires the doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law.[49] Like guilty knowledge, willfulness must generally be proven by circumstances from which it may be inferred.[50] Hence, the phrase "willfully and knowingly" means intentionally and consciously.[51]

2. Knowledge of the Nature of the Activity

"Knowledge of the nature of the criminal activity giving rise to the proceeds is required to establish a culpable mental state under" G.S. 14-118.8.[52]

Under the federal statutes, it is a crime to engage in certain conduct "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity."[53] The knowledge element is further defined: it means "that the person knew the property involved in the transaction represented proceeds from some form, though not

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42. G.S. 14-118.8(b).

43. State v. Stephenson, 218 N.C. 258, 264 (1940); *accord* State v. Williams, 226 N.C. App. 393, 399 (2013); *cf.* Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 632 (1971) ("the state of being aware"); State v. Moore, 188 N.C. App. 416, 423 (2008) ("aware of a high probability of a given activity's existence").

44. *See* State v. Bogle, 324 N.C. 190, 196 (1989) (rejecting the doctrine of willful blindness, whereby knowledge may be established by showing that the defendant acted with a conscious purpose to avoid learning the truth).

45. *E.g.*, State v. Ford, 388 N.C. 713, 725 (2025) (circumstantial evidence supported inference of actual knowledge).

46. *Bogle*, 324 N.C. at 195. When specific intent is not an element of the offense charged, scienter (i.e., guilty knowledge) may be presumed from an unlawful act, unless a defendant denies knowledge. *See* State v. Galaviz-Torres, 368 N.C. 44, 49 (2015); State v. Nobles, 329 N.C. 239, 244 (1991).

47. State v. Weldon, 314 N.C. 401, 406 (1985); *accord* State v. Massey, 287 N.C. App. 501, 507 (2023).

48. State v. Lamp, 383 N.C. 562, 570 (2022); *cf.* State v. Charles, 285 N.C. App. 494, 501 (2022) ("the word 'willfully' adequately expresses that the offense requires an intentional act.").

49. State v. Ramos, 363 N.C. 352, 355 (2009); State v. Brackett, 306 N.C. 138, 142 (1982); State v. Arnold, 264 N.C. 348, 349 (1965); *cf.* State v. Hales, 256 N.C. 27, 33 (1961) ("voluntarily, intentionally, purposely and deliberately, . . . without authority, and in violation of law").

50. *See Ramos*, 363 N.C. at 355; *Arnold*, 264 N.C. at 349; State v. Holloway, 69 N.C. App. 521, 526 (1984).

51. State v. Stephenson, 218 N.C. 258, 264 (1940); *accord* State v. Fraylon, 240 N.C. 365, 373 (1954); *Holloway*, 69 N.C. App. at 525.

52. G.S. 14-118.8(c).

53. 18 U.S.C. § 1956(a)(1).

necessarily which form, of activity that constitutes a felony."[54] Hence, it is sufficient to show that the defendant knew that the money represents the proceeds of some form of unlawful activity. The government need not prove that the defendant knew the exact nature of the unlawful activity or that the activity was a felony.[55]

Similarly, under the law of Delaware, Texas, and Wisconsin, "[k]nowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state."[56] Hence, while the general knowledge element requires a showing that the defendant was aware a transaction involved the proceeds of criminal activity, the specific knowledge disclaimer means the prosecution need not prove the defendant knew precisely what criminal activity it was.[57]

Under G.S. 14-118.8, "[k]nowledge of the nature of the criminal activity giving rise to the proceeds is required to establish a culpable mental state."[58] Though this provision bears a resemblance to the comparable provisions in Delaware, Texas, and Wisconsin, the differences are equally significant. Under those states' statutes, the prosecution need *not* prove a defendant's knowledge of the *specific* nature of the criminal activity. By contrast, in North Carolina, the prosecution is required to prove the defendant's knowledge of the nature of the criminal activity. Thus, while G.S. 14-118.8(c) may appear to impose an additional burden, it might be sufficient for the prosecution to establish the defendant's knowledge of the *general* nature of the criminal activity involved. Greater clarity will come only as North Carolina courts construe and apply the relevant knowledge provisions.

3. Belief Regarding the Funds

As explained more fully below, two of the categories permit a prosecution for money laundering even absent actual proceeds of criminal activity.[59] Still, in those cases, the State has the burden to prove that the defendant actually believed the funds involved were (1) the proceeds of criminal activity or (2) intended to further the commission of criminal activity.[60] Insofar as the funds referred to here are not in fact proceeds of criminal activity, evidence that the defendant had the requisite belief must be presumed to establish a culpable mental state otherwise shown by knowledge of the nature of the criminal activity giving rise to the proceeds.[61]

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54. 18 U.S.C. § 1956(c)(1). Many states' statutes include nearly identical language. *See* Fla. Stat. Ann. § 896.101; Ga. Code Ann. § 7-1-911; 720 Ill. Comp. Stat. Ann. 5/29B-0.5; Miss. Code Ann. § 97-23-101; N.J. Stat. Ann. § 2C:21-25; Okla. Stat. Ann. tit. 63, § 2-503.1l; Or. Rev. Stat. Ann. § 164.170; 18 Pa. Stat. and Cons. Stat. Ann. § 5111; 11 R.I. Gen. Laws Ann. § 11-9.1-15; Tenn. Code Ann. § 39-14-902; Utah Code Ann. § 76-9-1602; Wash. Rev. Code Ann. § 9A.83.010.

55. United States v. Spila, 136 F.4th 1296, 1304 (11th Cir. 2025); United States v. Flores, 454 F.3d 149, 155 (3d Cir. 2006); United States v. Hill, 167 F.3d 1055, 1068 (6th Cir. 1999); United States v. Maher, 108 F.3d 1513, 1527 (2d Cir. 1997).

56. Del. Code Ann. tit. 11, § 951; Tex. Penal Code Ann. § 34.02; Wis. Stat. Ann. § 943.895.

57. *See* DeLay v. State, 465 S.W.3d 232, 246–47 (Tex. Crim. App. 2014) (construing general knowledge element); Dominguez v. State, 474 S.W.3d 688, 692 (Tex. App. 2013) (construing specific knowledge disclaimer).

58. G.S. 14-118.8(c).

59. *See infra* Section IV.B.2.

60. G.S. 14-118.8(b)(3), (b)(4).

61. *Cf.* W. Va. Code Ann. § 61-15-1(7) ("a person may be considered to have actual knowledge if the belief is based upon representations of a law-enforcement officer engaged in his or her official duties while acting in an undercover capacity or a person acting at the direction of a law-enforcement officer engaged in his or her official duties").

4. *Specific Intents*

Three of the categories contain a specific intent requirement. One requires an intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity—a prototypical money laundering provision.[62] One requires an intent to promote the commission of criminal activity.[63] And one requires an intent to avoid a transaction reporting requirement under federal law.[64] The latter incorporates the federal offense known as "structuring."

Regulations enacted pursuant to the Bank Secrecy Act of 1970 required financial institutions to report transactions in currency exceeding $10,000.[65] This gave rise to the practice of "structuring," whereby agents known as "smurfs" engaged in multiple banking transactions, each involving less than $10,000, on behalf of those who did not wish to have their transactions reported.[66] The Money Laundering Control Act of 1986, which created federal money laundering crimes, also made it a crime to structure transactions for the purpose of avoiding transaction reporting requirements.[67]

B. *Actus Reus* Elements

Intent alone, not coupled with any attempt or act toward putting the intent into effect, is no crime.[68] The term "actus reus" refers to the wrongful deed that comprises the physical components of a crime.[69] The wrongful deed need not be committed by an individual acting alone; rather, a single offense may be committed by more than one person.[70] In that case, all those acting in concert or aiding and abetting in the commission of a criminal offense are principals and are equally guilty.[71]

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62. G.S. 14-118.8(b)(5).

63. G.S. 14-118.8(b)(6). As used in the federal statute, 18 U.S.C. § 1956, the term "intent to promote" means there must be evidence that the defendant's conduct not only promoted a specified unlawful activity but that he or she engaged in it with the intent to further the progress of the activity. United States v. Trejo, 610 F.3d 308, 314 (5th Cir. 2010).

64. G.S. 14-118.8(b)(7).

65. 31 C.F.R. § 103.22.

66. *See* Paul Fagyal, *The Anti-Money Laundering Provisions of the Patriot Act: Should They Be Allowed to Sunset?*, 50 St. Louis U. L.J. 1361, 1365 (2006) ("The process of smurfing involves a number of people making small deposits in a number of different depositary institutions so as to avoid detection.").

67. 31 U.S.C. § 5324; *see also* Lawrence, *supra* note 16, at 843–44.

68. State v. Sykes, 180 N.C. 679, 681 (1920); *cf.* 1 Wayne R. LaFave, Substantive Criminal Law § 6.1(b) (3d ed. 2025).

69. State v. Barnes, 229 N.C. App. 556, 563 (2013), *aff'd*, 367 N.C. 453 (2014).

70. *E.g.*, State v. Primus, 226 N.C. 671, 675 (1946).

71. State v. Williams, 299 N.C. 652, 656 (1980); State v. Owens, 75 N.C. App. 513, 520 (1985).

A person commits the offense of money laundering under G.S. 14-118.8 if the person does any of the following seven categories of conduct involving proceeds of criminal activity or funds:[72]

(1) Acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity.[73]
(2) Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.[74]
(3) Invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity.[75]
(4) Finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity.[76]
(5) Uses, transports, transmits, or transfers; conspires to use, transport, transmit, or transfer; or attempts to use, transport, transmit, or transfer the proceeds of criminal activity to conduct or attempt to conduct a transaction or make other disposition with the intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity.[77]
(6) Uses the proceeds of criminal activity with the intent to promote, in whole or in part, the commission of criminal activity.[78]

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72. G.S. 14-118.8(b). The Model Act creates four categories, including engaging in money laundering as a business. That category appears in several states' money laundering statutes, though not in North Carolina's. *E.g.*, Ariz. Rev. Stat. Ann. § 13-2317; Haw. Rev. Stat. Ann. § 708A-3; Iowa Code Ann. § 706B.2; Minn. Stat. Ann. § 609.497.

73. *Cf.* Del. Code Ann. tit. 11, § 951(a)(1); Ind. Code Ann. § 35-45-15-5(a)(1); Tex. Penal Code Ann. § 34.02(a)(1).

74. *Cf.* Del. Code Ann. tit. 11, § 951(a)(2); Ind. Code Ann. § 35-45-15-5(a)(2); Tex. Penal Code Ann. § 34.02(a)(2).

75. *Cf.* Del. Code Ann. tit. 11, § 951(a)(3); Ind. Code Ann. § 35-45-15-5(a)(3); Tex. Penal Code Ann. § 34.02(a)(3).

76. *Cf.* Del. Code Ann. tit. 11, § 951(a)(4); Tex. Penal Code Ann. § 34.02(a)(4).

77. Some jurisdictions make it a crime not only to conduct a transaction involving illicit property, but also to transport, transmit, or transfer illicit property with the intent to "conceal or disguise the nature, location, source, ownership, or control" of the property. *See* Colo. Rev. Stat. Ann. § 18-5-309; Fla. Stat. Ann. § 896.101; Haw. Rev. Stat. Ann. § 708A-3; 720 Ill. Comp. Stat. Ann. 5/29B-1; Miss. Code Ann. § 97-23-101; N.M. Stat. Ann. § 30-51-4; Ohio Rev. Code Ann. § 2909.29; Or. Rev. Stat. Ann. § 164.170; S.C. Code Ann. § 44-53-475. Others criminalize conducting a transaction with that intent. *See* 18 U.S.C. § 1956; Ariz. Rev. Stat. Ann. § 13-2317; Ga. Code Ann. § 7-1-915; Idaho Code Ann. § 18-8201; Iowa Code Ann. § 706B.2; Kan. Stat. Ann. § 21-5716; La. Stat. Ann. § 14:230; Md. Code Ann., Crim. Law § 5-623; Mass. Gen. Laws Ann. ch. 267A, § 2; Mich. Comp. Laws Ann. § 750.411k; Mont. Code Ann. § 45-6-341; N.J. Stat. Ann. § 2C:21-25; N.Y. Penal Law §§ 470.05, 470.10, 470.15, 470.20; Okla. Stat. Ann. tit. 63, § 2-503.1; 18 Pa. Stat. and Cons. Stat. Ann. § 5111; 11 R.I. Gen. Laws Ann. § 11-9.1-15; Tenn. Code Ann. § 39-14-903; Utah Code Ann. § 76-9-1602; Wash. Rev. Code Ann. § 9A.83.020; W. Va. Code Ann. § 61-15-2; Wis. Stat. Ann. § 943.895.

78. Some jurisdictions make it a crime not only to conduct a transaction involving illicit property, but also to transport, transmit, or transfer illicit property, with the "intent to promote" illegal activity. *See* Colo. Rev. Stat. Ann. § 18-5-309; Fla. Stat. Ann. § 896.101; Haw. Rev. Stat. Ann. § 708A-3; 720 Ill. Comp. Stat. Ann. 5/29B-1; Mass. Gen. Laws Ann. ch. 267A, § 2; Miss. Code Ann. § 97-23-101; N.Y. Penal Law §§ 470.05, 470.10, 470.15, 470.20; Or. Rev. Stat. Ann. § 164.170; S.C. Code Ann. § 44-53-475. Others criminalize conducting a transaction with that intent. *See* 18 U.S.C. § 1956; Cal. Penal Code § 186.10;

(7) Conducts or attempts to conduct a transaction involving the proceeds of criminal activity, knowing the property involved in the transaction constitutes proceeds of criminal activity with the intent to avoid a transaction reporting requirement under federal law.[79]

It will be noted that four of these categories directly involve the *proceeds* of criminal activity.[80]

1. Transactions

Two of the categories pertain to a *transaction* involving illicit proceeds.[81] "Transaction" is defined (following federal law) as "[a]ny purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition between any parties, persons, businesses, or entities, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected."[82] "Financial institution" is as defined in G.S. 14-119 (forgery) or 31 U.S.C. § 5312 (reports on monetary transactions).[83]

2. Funds

Two of the categories pertain to *funds that the person believes* are connected to criminal activity.[84] This terminology reflects the same concern that motivated a 1988 amendment to the federal laws to permit prosecution even when the funds are not in fact proceeds of criminal

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Ga. Code Ann. § 7-1-915; Okla. Stat. Ann. tit. 63, § 2-503.1c; 18 Pa. Stat. and Cons. Stat. Ann. § 5111; 11 R.I. Gen. Laws Ann. § 11-9.1-15; Tenn. Code Ann. § 39-14-903; W. Va. Code Ann. § 61-15-2.

79. Some jurisdictions make it a crime not only to conduct a transaction involving illicit property, but also to transport, transmit, or transfer illicit property, with the intent to "avoid a transaction reporting requirement." *See* Colo. Rev. Stat. Ann. § 18-5-309; Fla. Stat. Ann. § 896.101; 720 Ill. Comp. Stat. Ann. 5/29B-1; Miss. Code Ann. § 97-23-101; N.M. Stat. Ann. § 30-51-4; N.Y. Penal Law §§ 470.05, 470.10, 470.15, 470.20; Ohio Rev. Code Ann. § 2909.29; Or. Rev. Stat. Ann. § 164.170. Others criminalize conducting a transaction with that intent. *See* 18 U.S.C. § 1956; Ga. Code Ann. § 7-1-915; Haw. Rev. Stat. Ann. § 708A-3; Idaho Code Ann. § 18-8201; Iowa Code Ann. § 706B.2; Kan. Stat. Ann. § 21-5716; La. Stat. Ann. § 14:230; Mass. Gen. Laws Ann. ch. 267A, § 2; Mich. Comp. Laws Ann. § 750.411k; Mo. Ann. Stat. § 574.105; Mont. Code Ann. § 45-6-341; Okla. Stat. Ann. tit. 63, §§ 2-503.1, 2-503.1c; 18 Pa. Stat. and Cons. Stat. Ann. § 5111; 11 R.I. Gen. Laws Ann. § 11-9.1-15; Utah Code Ann. § 76-9-1602; Wash. Rev. Code Ann. § 9A.83.020; W. Va. Code Ann. § 61-15-2; Wis. Stat. Ann. § 943.895. Some states recognize a separate offense known as "structuring." *See* Del. Code Ann. tit. 11, § 951; N.J. Stat. Ann. § 2C:21-25.

80. G.S. 14-118.8(b)(1); (b)(3); (b)(5); (b)(6); *see also infra* Section IV.C.

81. G.S. 14-118.8(b)(2); (b)(7).

82. G.S. 14-118.8(a)(6). The term is defined similarly in other jurisdictions. *See* 18 U.S.C. § 1956; Colo. Rev. Stat. Ann. § 18-5-309; Fla. Stat. Ann. § 896.101; Ga. Code Ann. § 7-1-911; 720 Ill. Comp. Stat. Ann. 5/29B-0.5; Miss. Code Ann. § 97-23-101; Mo. Ann. Stat. § 574.105; Okla. Stat. Ann. tit. 63, § 2-503.1l; 11 R.I. Gen. Laws Ann. § 11-9.1-15; S.C. Code Ann. § 44-53-475; Utah Code Ann. § 76-9-1601; W. Va. Code Ann. § 61-15-1.

83. G.S. 14-118.8(a)(2). The term is defined similarly in other jurisdictions. *See* 18 U.S.C. § 1956; Cal. Penal Code § 186.9; Fla. Stat. Ann. § 896.101; Miss. Code Ann. § 97-23-101; Mo. Ann. Stat. § 574.105; Okla. Stat. Ann. tit. 63, § 2-503.1*l*; 11 R.I. Gen. Laws Ann. § 11-9.1-15; S.C. Code Ann. § 44-53-475; W. Va. Code Ann. § 61-15-1.

84. G.S. 14-118.8(b)(3) ("funds that the person believes are the proceeds of criminal activity"); (b)(4) ("funds that the person believes are intended to further the commission of criminal activity").

activity, as during government sting operations.[85] These categories would permit a prosecution even if the money involved is not actually used in the commission of criminal activity.[86] Still, the State would have to prove not only that a defendant committed the specified act but also that he or she had the requisite belief.[87] Further, that such a belief was inspired by a law enforcement officer who lacked criminal intent would not preclude prosecuting the defendant for conspiracy to commit money laundering.[88]

3. Attempts

Two of the categories include *attempts*.[89] Attempt is generally a common law offense requiring (1) the intent to commit the substantive offense, and (2) an overt act done for that purpose that goes beyond mere preparation but (3) which falls short of the completed offense.[90] Despite the element of noncompletion, attempt is functionally a lesser-included offense of the completed offense.[91] Except as otherwise provided, attempt is sentenced under the next-lower classification as the offense attempted.[92] Attempts under those categories of G.S. 14-118.8 that specifically incorporate attempts, however, would be sentenced at the same level as the felonies attempted.[93]

C. Elements Regarding the Proceeds

Something may become an instrumentality of crime by its manner of use (e.g., a deadly weapon)[94] or through some feature of the thing itself, such as its chemistry (e.g., drugs),[95] its provenance (e.g., stolen property),[96] or some other measurable attribute (e.g., weight, number).[97] Money laundering requires not only certain conduct with a certain intent but also money of a certain kind.

1. The Nature of the Proceeds

A person commits money laundering under G.S. 14-118.8 if the person commits an act "involving proceeds of criminal activity or funds."[98] As used here, the term "criminal activity" means an offense (1) classified as a felony under the laws of this state or the United States or (2) punishable

85. *See* Lawrence, *supra* note 16, at 847.

86. *Cf.* Del. Code Ann. tit. 11, § 951 ("'Funds that the person believes are the proceeds of criminal activity' means any funds that are believed to be proceeds of criminal activity including funds that are not the proceeds of criminal activity.").

87. *See supra* Section IV.A.3.

88. G.S. 14-118.8(i); *see also infra* Section VI.B.

89. G.S. 14-118.8(b)(5), (b)(7). The offense of conspiracy, incorporated in G.S. 14-118.8(b)(5), is addressed below.

90. State v. Melton, 371 N.C. 750, 756 (2018); *cf.* State v. Mellon, No. COA15-459, 2016 WL 1743504 (N.C. Ct. App. May 3, 2016) (unpublished) (omission of attempt from one statutory provision makes it impossible to charge attempt thereunder).

91. *See* G.S. 15-170 (indictment for completed offense will support conviction for attempt); State v. Baker, 369 N.C. 586, 597 (2017) (evidence of completed offense will support conviction for attempt).

92. G.S. 14-2.5.

93. *Cf.* G.S. 14-87 (armed robbery); State v. White, 322 N.C. 506, 515 (1988); *see also infra* Section VII.A.

94. *E.g.*, G.S. 14-32 (felony assault with a deadly weapon with intent to kill or inflicting serious injury).

95. G.S. 90-95(a)(3) (possession of a controlled substance).

96. G.S. 14-72 (possession of stolen goods).

97. G.S. 90-95(h) (drug trafficking).

98. G.S. 14-118.8(b). The two categories of money laundering that do not require the involvement of criminal proceeds are addressed above. *See* G.S. 14-118.8(b)(3); (b)(4); *see also supra* Section IV.B.2.

by imprisonment for more than a year under the laws of another state.[99] The term "proceeds of criminal activity" is defined as "[f]unds acquired or derived directly or indirectly from, produced through, realized through, or used in the commission of criminal activity."[100] And "funds" is defined to include coin or paper money; U.S. silver certificates, U.S. Treasury notes, and Federal Reserve System notes; foreign bank notes; currency or its equivalent; and virtual currency "or any other medium of exchange in electronic or digital format."[101] That money laundering is defined as conduct involving criminally-derived money requires the State to prove the existence of a nexus between the funds and felonious conduct.[102]

Addressing this issue under an analogous state money laundering statute, the Texas Court of Criminal Appeals identified several factors relevant to showing a nexus between money and drug dealing: a denial of knowledge of the money, a narcotics-dog alert on the money, the amount of the money, the packaging of the money, the secret storage of the money, the presence of illegal drugs, and the presence of records of drug transactions.[103] Sufficient evidence of a nexus may not be found, the court said, "unless the sum total of incriminating facts would allow a reasonable trier of fact to find, beyond a reasonable doubt, that the property (cash) was exchanged for drugs."[104]

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99. G.S. 14-118.8(a)(1). This would include offenses from such states as New Jersey that do not recognize felonies. *See* State v. Hefner, 289 N.C. App. 223, 228 (2023). *Cf.* Ind. Code Ann. § 35-45-15-1 (any offense that (1) is classified as a felony under Indiana or United States law or (2) occurs in another state and is punishable by confinement for more than one year under the laws of that state); La. Stat. Ann. § 14:230A.(1) (any offense that is (1) classified as a felony under the laws of this state or the United States or (2) punishable by confinement for more than one year under the laws of another state); Tex. Penal Code Ann. § 34.01(1) (any offense that is (1) classified as a felony under the laws of this state or the United States or (2) punishable by confinement for more than one year under the laws of another state).

100. G.S. 14-118.8(a)(5). *Cf.* Model Act ("property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind."). Many states have adopted this definition of "proceeds of criminal activity," with some variation in whether the word "proceeds" refers to funds or to property. *See* Del. Code Ann. tit. 11, § 951 (funds); Haw. Rev. Stat. Ann. § 708A-2 (property); Ind. Code Ann. § 35-45-15-4 (funds); Iowa Code Ann. § 706B.1 (property); La. Stat. Ann. § 14:230 (funds); Tenn. Code Ann. § 39-14-902 (gross profits); Tex. Penal Code Ann. § 34.01 (funds); Utah Code Ann. § 76-9-1601 (property); Va. Code Ann. § 18.2-246.2 (property); W. Va. Code Ann. § 61-15-1 (property or monetary instrument); Wis. Stat. Ann. § 943.895 (property or anything else of value).

101. G.S. 14-118.8(a)(3). *Cf.* Del. Code Ann. tit. 11, § 951(c)(2) (coin or currency, bank checks or money orders, or investment or negotiable instruments); Ind. Code Ann. § 35-45-15-2 (coin or paper money; U.S. silver certificates, U.S. Treasury notes, and Federal Reserve System notes; foreign bank notes; foreign bank drafts); La. Stat. Ann. § 14:230 (coin or paper money; U.S. silver certificates, U.S. Treasury notes, and Federal Reserve System notes; foreign bank notes; electronic or written checks, drafts, money orders, traveler's checks, or other instruments or orders; investment securities or negotiable instruments); Tex. Penal Code Ann. § 34.01 (coin or paper money; U.S. silver certificates, U.S. Treasury notes, and Federal Reserve System notes; foreign bank notes; currency or its equivalent).

102. *Cf.* O'Brien v. State, 544 S.W.3d 376, 394 (Tex. Crim. App. 2018) ("the [Texas] money laundering statute requires proof of a temporal connection or nexus between the transferred money and some criminal activity."); Deschenes v. State, 253 S.W.3d 374, 381 (Tex. App. 2008) (same).

103. Acosta v. State, 429 S.W.3d 621, 625–26 (Tex. Crim. App. 2014).

104. *Id.*

2. The Value of the Proceeds

A person commits money laundering under G.S. 14-118.8 if the person commits an act involving illicit proceeds or funds "that alone or aggregated . . . exceed ten thousand dollars."[105] The class of offense depends on whether the value of the proceeds or funds is less than one hundred thousand dollars (a Class H felony) or one hundred thousand dollars or more (a Class C felony).[106] The most plausible interpretation of these provisions is that the Class H felony requires a showing that the value of the proceeds or funds exceeds ten thousand dollars, and the Class C felony requires a showing that the value of the proceeds or funds equals or exceeds one hundred thousand dollars.[107] This means that conduct that would otherwise constitute money laundering in North Carolina is not criminal under G.S. 14-118.8 unless the value of the funds exceeds ten thousand dollars.[108]

3. Determination of Value

In the case of property crimes, the value of stolen property is determined by fair market value at the time of the taking, not replacement cost.[109] Fair market value is the price that a willing buyer would pay for the item on the open market.[110] A finding of value may be based on evidence of the price that the owner paid for the property shortly before its theft.[111]

In a prosecution for money laundering, if the funds alleged to be the proceeds of criminal activity take the form of United States currency, the determination of value would be fairly straightforward. Evidence that the defendant, with the requisite mental state, engaged in the requisite conduct with more than ten thousand dollars in cash would be sufficient. By contrast,

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105. G.S. 14-118.8(b).

106. G.S. 14-118.8(e).

107. There is another possibility. One might read the ten-thousand-dollar threshold as applicable only to "funds," the last antecedent. *See* N.C. Dep't of Env't Quality, Div. of Water Res. v. N.C. Farm Bureau Fed'n, Inc., 388 N.C. 366, 374 (2025) (discussing doctrine of last antecedent). The Class C felony would still require a showing that the value of the proceeds or funds equals or exceeds one hundred thousand dollars, but the Class H felony, at least as regards proceeds, would require no showing of any threshold value. *Cf.* 18 U.S.C. § 1956; G.S. 14-100. The problem with this interpretation is that the statute, read as a whole, does not otherwise draw a distinction between proceeds and funds. Indeed, the term "proceeds of criminal activity" is defined as "funds." G.S. 14-118.8(a)(5). To the extent the seven categories recognize any such distinction, it is between actual proceeds of criminal activity and perceived proceeds of criminal activity ("funds that the person believes are the proceeds of criminal activity"). G.S. 118.8(b)(3). The subject of the threshold amount in the language defining the offense would therefore seem to be "proceeds of criminal activity or funds," shorthand for the two sorts of illicit proceeds referenced in the categories: actual and perceived. *Cf.* G.S. 118.8(e) (abbreviating the terms further to "proceeds or funds").

108. *Cf.* G.S. 14-86.6(a2) (organized retail theft) (lowest level felony requires a showing of value exceeding $1,500).

109. State v. Morris, 318 N.C. 643, 645 n.1 (1986); *cf.* G.S. 14-86.5(8) (defining value as retail value as advertised).

110. State v. Haire, 96 N.C. App. 209, 210 (1989).

111. State v. Pierce, 279 N.C. App. 494, 502 (2021).

expert testimony might be required to establish the value of foreign bank notes or virtual currency.[112] In any event, a defendant is entitled to a jury determination that the requisite value is proven beyond a reasonable doubt.[113]

4. Aggregation

Several statutes now allow the State to aggregate the value of multiple offenses to reach a threshold amount.[114] A thorough aggregation procedure is described in G.S. 15A-1340.16F, which contains provisions for how to plead and prove the issues involved in aggregating multiple offenses for sentencing. Under that statute, the State in its pleading must allege facts that trigger aggregation and identify the offenses to which aggregation shall apply.[115] The State must prove the issues involved in aggregation beyond a reasonable doubt unless the defendant pleads guilty or no contest to the issues.[116] And if multiple offenses are aggregated as provided, the trial court is required to use the aggregated value of the offenses when determining the level of punishment.[117]

By contrast, G.S. 14-118.8 contemplates aggregation, but it says very little about how to do it. The term "aggregated" appears once in the provision defining the financial threshold for the offense ("involving proceeds of criminal activity or funds that alone or aggregated . . . exceed ten thousand dollars").[118] The term appears again in a separate provision devoted to aggregation. Under that provision, "[i]f the proceeds of criminal activity are related to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the value of the proceeds aggregated in determining the classification of the offense[.]"[119]

As in G.S. 15A-1340.16F, aggregation under G.S. 14-118.8 is thus conditioned upon the existence of additional facts.[120] For aggregation to apply in the context of money laundering, the proceeds of criminal activity must be "related to one scheme or continuing course of conduct."[121] The single scheme or continuing course of conduct would have to include multiple acts involving

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112. *See* United States v. Martin, 320 F.3d 1223, 1227 (11th Cir. 2003) (upholding district court's determination of value in federal money laundering prosecution); United States v. Ulbricht, 31 F. Supp. 3d 540, 570 (S.D.N.Y. 2014) (ruling that federal money laundering statute is broad enough to encompass the use of Bitcoins in financial transactions).

113. *See* Blakely v. Washington, 542 U.S. 296, 301 (2004); State v. King, 386 N.C. 601, 606 (2024).

114. *See* G.S. 14-56 (breaking and entering motor vehicles); G.S. 14-86.6 (organized retail theft); G.S. 15A-1340.16F (aggregation of multiple financial crime offenses).

115. G.S. 15A-1340.16F(d).

116. G.S. 15A-1340.16F(e).

117. G.S. 15A-1340.16F(f); *see also* Joseph L. Hyde, *Aggregation of Multiple Financial Crimes under G.S. 15A-1340.16F*, Admin. of Just. Bull. No. 2025/01 (UNC Sch. of Gov't Jan. 2025), https://www.sog.unc.edu/publications/bulletins/aggregation-multiple-financial-crimes-under-gs-15a-134016f.

118. G.S. 14-118.8(b).

119. G.S. 14-118.8(g). This provision is identical to one in Texas's money laundering statute. *See* Tex. Penal Code Ann. § 34.02(f). Other jurisdictions' statutes also contain aggregation provisions, though not using the same language. *See* Cal. Penal Code § 186.10; Haw. Rev. Stat. Ann. § 708A-3; Mich. Comp. Laws Ann. §§ 750.411m; 750.411n; 750.411o; 750.411p; N.J. Stat. Ann. § 2C:21-27; N.Y. Penal Law § 470.03.

120. G.S. 14-118.8(g); *cf.* G.S. 15A-1340.16F(b).

121. G.S. 14-118.8(g).

criminal proceeds.[122] And if the punishment depends on aggregated value, the defendant would be entitled to a jury determination of whether the State had established that the multiple acts were, in fact, related to one scheme or continuing course of conduct.[123] To the extent this makes aggregated value an element of money laundering, that fact would also have to be alleged in the pleading.[124]

Section 14-118.8 does not define the phrase "one scheme or continuing course of conduct."[125] By way of comparison, a condition for aggregation under G.S. 15A-1340.16F is that the offenses are "based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a common scheme or plan."[126] This condition (identical to that for joinder of offenses) has been summarized as requiring some "transactional connection."[127] Relevant factors include the nature of the offenses, any commonality of facts, and the lapse of time between them.[128]

If offenses are aggregated under G.S. 15A-1340.16F, the offenses "shall" be punished as one felony, and the trial court "shall" use the aggregated value when determining the level of punishment.[129] Under G.S. 14-118.8, if it is found or admitted that the proceeds of criminal activity are related to one scheme or continuing course of conduct, "[1] the conduct *may* be considered as one offense and [2] the value of the proceeds aggregated" in determining the level of punishment.[130] The legislature's use of the term "may" instead of "shall" generally indicates a discretionary ruling.[131] As used in G.S. 14-118.8, however, if multiple acts involving criminal proceeds are aggregated to reach the initial financial threshold, the trial court is probably required to treat the multiple acts as a single offense, as none individually would constitute money laundering in its own right.[132]

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122. *Cf.* G.S. 15A-1340.16F(b) (requiring conviction of two or more of the same eligible offenses). Of course, if a single occurrence met the financial threshold, it would not be necessary to invoke the aggregation provisions of the statute.

123. *See* Blakely v. Washington, 542 U.S. 296, 301 (2004); State v. King, 386 N.C. 601, 606 (2024).

124. *See* G.S. 15A-924(a)(5) (pleading must contain statement of facts supporting every element of the offense charged).

125. *Cf.* State v. Cummings, 346 N.C. 291, 328 (1997) (construing G.S. 15A-2000(e)(11), which creates an aggravating circumstance for capital felonies that the murder was part of a course of conduct that included other violent crimes).

126. G.S. 15A-1340.16F(b)(2).

127. G.S. 15A-926(a) (joinder); State v. Moses, 350 N.C. 741, 750 (1999); State v. Chapman, 342 N.C. 330, 343 (1995).

128. State v. Perry, 142 N.C. App. 177, 181 (2001); *see also* Hyde, *supra* note 117.

129. G.S. 15A-1340.16F(f).

130. G.S. 14-118.8(g) (emphasis added).

131. *See* Silver v. Halifax Cnty. Bd. of Comm'rs, 371 N.C. 855, 864 (2018); *cf.* State v. Robinson, 383 N.C. 512, 523 (2022) (the term "may" in sentencing statute indicates "discretionary option").

132. *See* Campbell v. First Baptist Church of City of Durham, 298 N.C. 476, 483 (1979) (construing the term "may" as conferring authority to do some act which, once undertaken, must be done in the statutorily prescribed manner).

V. Pleading

Under the state constitution, a defendant charged with a felony is entitled to indictment by a grand jury.[133] By statute, an indictment must contain, among other things, a statement of facts supporting every element of the offense charged.[134] For a statutory offense like money laundering, an indictment couched in the language of the statute is generally sufficient to charge the offense.[135]

"A person commits the offense of money laundering if the person . . . [1] knowingly and willfully [2] does any of the following [seven categories] [3] involving proceeds of criminal activity or funds that alone or aggregated . . . exceed ten thousand dollars."[136] Hence, an indictment for money laundering in North Carolina must allege the components identified above: (1) a *mens rea* element, (2) an *actus reus* element, and (3) elements regarding the proceeds of criminal activity.

With regard to the *mens rea* elements, every allegation of money laundering must allege, at least, that the conduct was knowing and willful and with knowledge of the nature of the criminal activity giving rise to the proceeds.[137] When the particular conduct falls within a category that includes an additional specific-intent requirement, that specific intent would also have to be alleged.[138]

With regard to the *actus reus* elements, each allegation should track one of the seven categories of prohibited conduct. Nearly all the categories include multiple acts. Under the antimerger provision (discussed more fully below), it is arguable that each separate act is a separate offense.[139] Each act alleged to constitute money laundering should be set out in a separate count of the indictment.[140]

With regard to the criminal proceeds, it is probably unnecessary for the indictment to identify the nature of the criminal activity giving rise to the proceeds. To be sure, the State is required to prove at trial that the defendant had knowledge of the nature of the criminal activity giving rise to the proceeds.[141] But, as the offense is statutorily defined in terms of acts involving criminal proceeds (or funds that the person believes are criminal proceeds), the indictment should track this language as far as possible.[142] If a prosecutor in the indictment elects to identify the nature of the criminal activity allegedly giving rise to the proceeds, the State might be bound to prove that allegation.[143]

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133. N.C. Const. art. I, § 22; *see also* State v. Thomas, 236 N.C. 454, 457 (1952).

134. G.S. 15A-924(a)(5). The same is true of a bill of information. G.S. 15A-644(b).

135. *E.g.*, State v. Applewhite, 386 N.C. 431, 440 (2024); State v. Mostafavi, 370 N.C. 681, 685 (2018).

136. G.S. 14-118.8(b).

137. *Id.* ("knowingly and willfully"); G.S. 118.8(c) ("[k]nowledge of the nature of the criminal activity").

138. G.S. 14-118.8(b)(5) (intent to conceal or disguise), (b)(6) (intent to promote), (b)(7) (intent to avoid); *cf.* State v. Maloney, 253 N.C. App. 563, 570 (2017) (indictment could not be amended to add element of intent of knowledge).

139. G.S. 14-118.8(h); *see also infra* Section VII.A.

140. *See* G.S. 15A-924(a)(2) (pleading must contain a separate count addressed to each offense charged).

141. G.S. 14-118.8(c); *see also supra* Section IV.A.2. An indictment need not contain "allegations of an evidentiary nature." G.S. 15A-924(a)(5); State v. Coker, 312 N.C. 432, 439 (1984) ("evidentiary matters need not be alleged").

142. *E.g.*, State v. Applewhite, 386 N.C. 431, 440 (2024); State v. Mostafavi, 370 N.C. 681, 685 (2018).

143. *See* State v. Silas, 360 N.C. 377, 383 (2006) (felony breaking or entering indictment need not name intended felony, but if the indictment identifies the intended felony, the State is bound to prove that the defendant intended that felony).

As for the value of the criminal proceeds, an indictment for money laundering must allege, at least, that the value of the proceeds exceeds ten thousand dollars.[144] If the State seeks to establish a Class C felony, the indictment should allege that the value of the proceeds or funds is one hundred thousand dollars or more.[145] If the State is relying on aggregation to reach the financial threshold for money laundering ($10,000) or to justify a higher-level punishment ($100,000), the indictment must also allege that the proceeds are related to one scheme or continuing course of conduct, and it should identify the multiple acts that amount to one scheme or continuing course of conduct.[146]

Though G.S. 14-118.8 creates a statutory defense to money laundering, it is probably unnecessary to negate that defense in an indictment for money laundering.[147] As explained below, the statutory defense is best understood as an affirmative defense.[148] Even when indictments were treated as jurisdictional, it was not necessary to include allegations to negate any affirmative defenses.[149]

VI. Procedure

A. Venue

At common law, the grand jury had no power to indict a defendant for crimes committed outside the county in which the grand jury was convened.[150] The legislature may, however, extend the grand jury's power beyond the territorial limitation of the common law.[151] Accordingly, by statute, "the place for returning a presentment or indictment is a matter of venue and not jurisdiction."[152] Further, allegations of venue in a criminal pleading become conclusive absent timely objection.[153]

Still, venue generally lies in the county where the charged offense occurred, meaning that any act or omission constituting part of the offense occurred within the territorial limits of the county.[154] Under G.S. 15A-132, each county has concurrent venue if (1) the charged offense occurred in more than one county or (2) joinable offenses occurred in more than one county.[155] Offenses may be joined for pleading or trial when they are "based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan."[156]

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144. G.S. 14-118.8(b); *see also supra* Section IV.C.2.
145. G.S. 14-118.8(e)(2); *see also infra* Section VII.B.
146. G.S. 14-118.8(g); *see also supra* Section IV.C.4.
147. G.S. 14-118.8(d) (defense).
148. *See infra* Section VI.C.
149. State v. Rankin, 371 N.C. 885, 889 (2018); State v. Sturdivant, 304 N.C. 293, 310 (1981).
150. State v. Randolph, 312 N.C. 198, 207 (1984).
151. State v. Flowers, 318 N.C. 208, 213 (1986).
152. G.S. 15A-631.
153. G.S. 15A-135; State v. Brown, 85 N.C. App. 583, 587 (1987).
154. G.S. 15A-131.
155. G.S. 15A-132.
156. G.S. 15A-926(a).

Under the venue provision of G.S. 14-118.8, each county where "a part of the violations" occurred has concurrent venue "as described in G.S. 15A-132."[157] The same venue provision appears in other North Carolina statutes that permit aggregation in one form or another.[158] But whereas G.S. 15A-1340.16F incorporates the test for joinder of offenses as a condition for aggregation ("based on the same act or transaction"), G.S. 14-118.8 creates an ostensibly different test for aggregation of money laundering offenses ("related to one scheme or continuing course of conduct").[159] Further, the venue provision of G.S. 14-118.8 stands alone in failing to mention aggregation at all.

Construed *in pari materia*, the venue provision of G.S. 14-118.8 is probably intended to do nothing more than recognize the concurrent venue of each county wherein aggregated conduct occurred.[160] And to the extent the condition for aggregating money laundering offenses is essentially the same as for joinder, the offenses may be joined and tried where any part of the offenses was committed. But by failing to link venue with aggregation, the venue provision of the money laundering statute might also be construed as *conferring* concurrent venue on multiple counties when a defendant is charged with multiple counts, regardless of any transactional connection. This would produce the anomalous outcome that charges that could not be joined for trial could still be tried in any county where only part of the offenses occurred. It is unlikely the legislature intended this unwieldy result.

B. Conspiracy

An agreement to commit any offense is punishable under the common law as a conspiracy.[161] In other words, a criminal conspiracy is an agreement between two or more people to do an unlawful act or do a lawful act in an unlawful manner.[162] A conspiracy may be shown by evidence of a mutual implied understanding; neither express agreement nor overt act is necessary.[163] Except as provided, conspiracy is punished one class lower than the crime the person conspired to commit.[164]

Still, under traditional rules of conspiracy, there must be a plurality of intent. "One person cannot conspire with himself."[165] Consequently, if only one party to the agreement has the requisite mental state, then that one person is not guilty of conspiracy.[166] It follows that, "where

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157. G.S. 14-118.8(k). Several other states' money laundering statutes contain venue provisions. *See* Ga. Code Ann. § 7-1-917; Okla. Stat. Ann. tit. 63, § 2-503.1k; 18 Pa. Stat. and Cons. Stat. Ann. § 5111; Tenn. Code Ann. § 39-14-905.

158. G.S. 14-56(c) (breaking and entering motor vehicles); G.S. 14-86.6(c) (organized retail theft); 15A-1340.16F(c) (aggregation of multiple financial crimes).

159. *Compare* G.S. 14-118.8(g) *with* G.S. 15A-1340.16F(b)(2).

160. *See* Hyde, *supra* note 117, at 11 (venue provision is largely descriptive of preexisting law).

161. State v. Arnold, 329 N.C. 128, 142 (1991) ("a common law offense").

162. State v. Winkler, 368 N.C. 572, 575 (2015).

163. State v. Chavez, 378 N.C. 265, 270 (2021); State v. Gibbs, 335 N.C. 1, 47 (1993).

164. G.S. 14-2.4; *cf.* G.S. 90-95(i) (conspiracy to commit drug trafficking is punished the same as drug trafficking).

165. State v. Horton, 275 N.C. 651, 657 (1969).

166. State v. Melton, 371 N.C. 750, 762 n.3 (2018); *see also* State v. Wilkins, 34 N.C. App. 392, 400 (1977) ("there can be no conspiracy between a defendant and one who only feigns acquiescence in a crime").

one of two persons who allegedly conspired to do an illegal act is an officer of the law acting in discharge of his duties and intends to frustrate the conspiracy, the other person cannot be convicted of conspiracy."[167]

A separate provision of the money laundering statute makes several important changes to these general rules. First, conspiracy to commit money laundering is punished the same as a conviction for the completed offense, not one class lower.[168] In addition, "all other provisions of [G.S. 14-118.8] apply to that offense [i.e., conspiracy]."[169] Conspiracy to commit money laundering is thus subject to the various procedural provisions of G.S. 14-118.8, such as forfeiture and aggregation.[170]

More fundamentally, under the conspiracy provision of G.S. 14-118.8, a conspiracy to commit money laundering may exist without a plurality of intent. In the words of the statute,

> It shall not be a defense to conspiracy to commit an offense . . . that the person with whom the defendant is alleged to have conspired was a law enforcement officer or a person acting at the direction of a law enforcement officer that represented to the defendant that the funds are proceeds of or are intended to further the commission of criminal activity.[171]

The statute thus adopts the unilateral approach to conspiracy taken by the Model Penal Code and a few other states, at least with regard to two categories of money laundering.[172] Like the categories that permit conviction absent a showing of illicit proceeds, the conspiracy provision reinforces the ability of law enforcement officers to disrupt criminal networks through undercover operations.[173]

C. Statutory Defense

The Due Process Clause of the Fourteenth Amendment requires the prosecution to prove beyond a reasonable doubt all the elements of the offense charged. But proof of the nonexistence of all affirmative defenses has never been constitutionally required.[174] An affirmative defense is

167. State v. Hammette, 58 N.C. App. 587, 589 (1982).

168. G.S. 14-118.8(i) ("shall be punished as provided in subsection (e) of this section").

169. *Id.*

170. One of the seven categories of conduct includes a specific reference to conspiracy. *See* G.S. 14-118.8(b)(5). Given the general conspiracy provision, the reference to conspiracy in only one category of conduct appears to be redundant.

171. G.S. 14-118.8(i). *Cf.* Fla. Stat. Ann. § 896.101 ("It does not constitute a defense . . . that . . . [a]ny stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.").

172. *See* Joseph L. Hyde, *Unilateral Conspiracy and Money Laundering*, N.C. Crim. L. Blog (Jan. 14, 2025), nccriminallaw.sog.unc.edu/2025/01/14/unilateral-conspiracy-and-money-laundering. *See also* Model Penal Code (A.L.I. 1962, latest drafts and updates 2023).

173. *See* Model Act Policy Statement.

174. Patterson v. New York, 432 U.S. 197, 210 (1977); *accord* State v. Howren, 312 N.C. 454, 459 (1984).

one that depends on the existence of some independent, distinct, substantive matter beyond the essentials of the offense charged.[175] The burden of proving an affirmative defense is on the defendant.[176]

It is a defense to money laundering under G.S. 14-118.8 "that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose pursuant to the laws of this State or the United States."[177] The money laundering statutes of three other states—Indiana, Louisiana, and Texas—have identical provisions.[178] In the only reported case to have considered the provision, the Texas Court of Appeals rejected a defendant's argument that evidence established the statutory defense in his case, noting that the defendant had an opportunity to present his defense to the jury but chose not to do so.[179] Although G.S. 14-118.8 neither describes the defense as an affirmative one nor allocates the burden, the most plausible interpretation is that it creates an affirmative defense with the burden of proof on the defendant.[180]

Further, a financial institution, acting with the intent described by the statutory defense, is not liable for civil damages to a person who (1) claims an ownership interest in laundered money or (2) conducts with the financial institution or insurer a transaction concerning laundered money.[181] A similar provision appears only in Texas's statutes.[182] This limitation on liability probably refers to the civil action created elsewhere in North Carolina law for victims of racketeering activity.[183]

175. State v. Rankin, 371 N.C. 885, 889 (2018) (quoting State v. Sanders, 280 N.C. 81, 85 (1971)).

176. State v. Strickland, 307 N.C. 274, 297 (1983) (duress); State v. Cureton, 218 N.C. 491, 495 (1940) (intoxication); *cf.* 1 Wayne R. LaFave, et al., Criminal Procedure § 1.5(d) (4th ed. 2025) ("American jurisdictions commonly impose upon the defense . . . the burden of initially introducing evidence of 'defenses' that will relieve the defendant of liability even though the basic elements of the crime are established.").

177. G.S. 14-118.8(d). Other North Carolina statutes include comparable provisions. *See* G.S. 14-27.20(4) (affirmative defense to sexual act); 14-43.16(a) (affirmative defense to human trafficking); 14-159.6(c) (affirmative defense to trespassing); 14-163.1(f) (affirmative defense to assaulting a law enforcement agency animal); 14-269(b1) & (b2) (defenses to carrying concealed weapons); 14-269.2(l) (affirmative defense to weapon on campus); 14-309.1(a) (defense to possession of slot machine); 14-445(a) (defense to public intoxication).

178. *See* Ind. Code Ann. § 35-45-15-5; La. Stat. Ann. § 14:230; Tex. Penal Code Ann. § 34.02.

179. Perez v. State, No. 13-00-519-CR, 2003 WL 2006580, at *9 (Tex. App. Corpus Christi May 1, 2003) (not designated for publication).

180. Several states also recognize a defense pertaining to transactions necessary to obtain the representation of counsel. *See* Ark. Code Ann. § 5-42-204; Del. Code Ann. tit. 11, § 951; Ind. Code Ann. § 35-45-15-5; La. Stat. Ann. § 14:230; Tex. Penal Code Ann. § 34.02. Other states phrase this as an exception to criminal liability under their statutes. *See* Kan. Stat. Ann. § 21-5716; Md. Code Ann., Crim. Law § 5-623; Okla. Stat. Ann. tit. 63, § 2-503.1.

181. G.S. 14-118.8(j). "Insurer" is as defined in G.S. 58-1-5. G.S. 14-118.8(a)(4).

182. *See* Tex. Penal Code Ann. § 34.021.

183. *See* G.S. 75D-8(c) (innocent person has a cause of action for three times the actual damages sustained).

VII. Punishment

A. Merger

As a general proposition, courts will presume that the legislature did not intend for a defendant to be sentenced for both a greater and a lesser-included offense based on the same conduct.[184] This doctrine is known in some states as "merger."[185] In North Carolina, for example, when a defendant is convicted of felony murder, "the underlying felony constitutes an element of first-degree murder and merges into the murder conviction" for purposes of sentencing.[186] Attempt is likewise treated as a lesser-included offense of the completed crime.[187] The judicial presumption against cumulative punishment may, however, be rebutted by a clear indication of legislative intent.[188]

Under G.S. 14-118.8, "[e]ach violation . . . [1] constitutes a separate offense and [2] shall not merge with any other offense."[189] This provision defines the unit of prosecution for money laundering. It governs, in other words, how many counts are supported by a single act or course of conduct.[190]

A nearly identical antimerger provision appears in G.S. 14-43.11 (human trafficking).[191] Under that statute, a person commits the offense of human trafficking when the person

> (i) knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, patronizes, solicits, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude or
>
> (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.[192]

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184. *See* State v. Etheridge, 319 N.C. 34, 50 (1987); *see also* Joseph L. Hyde, *Double Jeopardy in North Carolina*, Admin. of Just. Bull. No. 2025/03 (UNC Sch. of Gov't June 2025), www.sog.unc.edu/publications/bulletins/double-jeopardy-north-carolina.

185. 6 Wayne R. LaFave, et al., Criminal Procedure § 26.3(f) (4th ed. 2025).

186. State v. Millsaps, 356 N.C. 556, 560 (2002); *cf.* State v. Carroll, 356 N.C. 526, 535 (2002) (another merger doctrine precludes using an assault that results in the victim's death as the underlying felony in a felony murder prosecution).

187. *See supra* Section IV.B.3; *see also* 2 Wayne R. LaFave, Substantive Criminal Law § 11.5(c) (3d ed. 2025) (noting that, under the contemporary merger rule, a defendant may not be punished for both attempt and the completed offense).

188. State v. Fernandez, 346 N.C. 1, 19 (1997); State v. Elliott, 344 N.C. 242, 277 (1996).

189. G.S. 14-118.8(h); *cf.* Fla. Stat. Ann. § 896.103 (separate offense); Nev. Rev. Stat. Ann. § 207.195 (separate offense); N.J. Stat. Ann. § 2C:21-27 (nonmerger); W. Va. Code Ann. § 61-15-4 (separate offense).

190. *See* State v. Smith, 323 N.C. 439, 441 (1988); *cf.* Brittany L. Bromell, *Units of Prosecution: Charging Multiple Counts for the Same Conduct*, Admin. of Just. Bull. No. 2022/01 (UNC Sch. of Gov't Sept. 2022), www.sog.unc.edu/sites/default/files/reports/2022-08-31%2020220160%20AoJB_Williams.pdf.

191. G.S. 14-43.11(c); *cf.* G.S. 14-10.1(c) (terrorism); 14-43.12(c) (involuntary servitude); 14-43.13(c) (sexual servitude); 14-150.2(d) (injuring energy facility).

192. G.S. 14-43.11(a).

Construing the antimerger provision of G.S. 14-43.11, the North Carolina Supreme Court said this language indicates that human trafficking is not a continuing offense.[193] That is, it is not a crime intended to cover multiple acts that will support only one conviction.[194] "The explicit language in the statute that each violation is a separate offense demonstrates that each distinct act of recruiting, enticing, harboring, transporting, providing or obtaining a victim can be separately prosecuted."[195] Further, the antimerger clause means that (1) a single defendant can commit the offense through multiple acts with the same victim, (2) each separate violation may be separately prosecuted, and (3) the several violations shall not merge with each other.[196]

Applying the same reasoning to the money laundering statute, a defendant could be prosecuted for both possessing the proceeds of criminal activity and conducting a transaction with the same proceeds of criminal activity (i.e., violations of two different subdivisions of G.S. 118.8(b)).[197] Similarly, a defendant could be prosecuted for both possessing and transporting the same proceeds of criminal activity (i.e., violations designated by separate acts within the same subdivision).[198] The crime of conspiracy does not merge with the substantive offense in any event, so there would be no impediment to prosecuting a defendant for both transporting the proceeds of criminal activity with the intent to conceal or disguise the source of the funds and conspiracy to commit the same.[199]

Difficult questions may arise regarding attempts. As noted above, a successful attempt to commit a crime generally will not support two convictions, one for attempt and another for the completed offense.[200] A person commits money laundering, however, if the person *conducts or attempts to conduct* a prohibited transaction.[201] One consequence of including attempt in the definition of the crime is that attempt is punished as an offense of the same class as the completed offense.[202] Another consequence, given the antimerger provision, is that a defendant might be convicted for both attempt and a completed offense based on the same conduct. It seems unlikely that the legislature intended a result so contrary to the general rule, but the antimerger provision could be so construed.

The possibility of aggregation raises similar issues. Section 14-118.8 is currently the only statute in Chapter 14 (Criminal Law) that contains both aggregation and antimerger provisions. It is thus the only statute under which the question could arise whether the State may seek to aggregate the value of proceeds involved in a defendant's possession and transportation (for example) *of the same proceeds*. Even if, pursuant to the antimerger provision, possession and transportation of the same proceeds may be separately prosecuted, it would not be advisable to

193. State v. Applewhite, 386 N.C. 431, 435 (2024).

194. *See* State v. Manning, 139 N.C. App. 454, 467 (2000), *aff'd per curiam*, 353 N.C. 449 (2001); *cf.* Hyde, *supra* note 184.

195. *Applewhite*, 386 N.C. at 435.

196. *Id.* at 436.

197. G.S. 14-118.8(b)(1) (possession); (b)(2) (conducting a transaction).

198. G.S. 14-118.8(b)(1).

199. G.S. 14-118.8(b)(5); *see also* State v. Kemmerlin, 356 N.C. 446, 477 (2002) ("conspiracy is a separate offense from the substantive offense and as such does not merge into the substantive offense").

200. *See* State v. Baker, 369 N.C. 586, 596 (2017) (quoting Rollin M. Perkins & Ronald N. Boyce, Criminal Law 612 (3d ed. 1982)); State v. Canup, 117 N.C. App. 424, 428 (1994) (same).

201. G.S. 14-118.8(b)(7); *cf.* G.S. 118.8(b)(5) (uses, conspires to use, and attempts to use the same proceeds).

202. *See supra* Section IV.B.3; *cf.* G.S. 14-2.5 (attempt generally punished as one class below offense attempted).

try to reach a threshold amount by counting the same proceeds more than once. The financial threshold elements of the statute would be essentially meaningless if they could be proved by such questionable accounting.

B. Classification

As noted above, the class of the offense for money laundering depends on whether the value of the proceeds is more or less than one hundred thousand dollars.[203] If the value is less, the offense is a Class H felony.[204] If the value is equal or more, the offense is a Class C felony.[205] Strictly speaking, the two classes of offense are nonoverlapping, that is, they are mutually exclusive. Courts may, however, construe the Class H felony as a lesser-included offense of the Class C felony.[206]

The aggregation provision, discussed above, allows the value of the proceeds to be aggregated in determining (1) the initial financial threshold and (2) the classification of the offense.[207] Though the amounts are different, the discussion of aggregation herein as it pertains to the initial financial threshold applies also to the classification of the offense.[208] If the evidence supports a finding that the value of the aggregated proceeds is equal to or exceeds one hundred thousand dollars, the State may charge a defendant with Class C money laundering. In that case, the State would have to plead and prove (or obtain an admission) not only that the value equals or exceeds one hundred thousand dollars but also that the proceeds are related to one scheme or continuing course of conduct.[209]

The punishment provision of G.S. 14-118.8 also states that this penalty is incurred "[i]n addition to any other civil or criminal penalties provided by law."[210] This provision confirms that money laundering may be separately punished in addition to other offenses arising from the same conduct. It may be contrasted with a clause that appears in several other statutes creating criminal liability unless the conduct is covered by "some other provision of law" providing greater punishment.[211]

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203. G.S. 14-118.8(e); *see supra* Section IV.C.1.

204. G.S. 14-118.8(e)(1).

205. G.S. 14-118.8(e)(2). State law recognizes other Class C and Class H felonies distinguished by a $100,000 threshold. *See* G.S. 14-74 (larceny by servants or other employees); 14-90 (embezzlement of property received by virtue of office or employment); 14-93 (embezzlement by treasurers of charitable and religious organizations); 14-94 (embezzlement by officers of railroad companies); 14-97 (appropriation of partnership funds by partner to personal use); 14-98 (embezzlement by surviving partner); 14-100 (obtaining property by false pretenses).

206. *See, e.g.*, State v. Holmes, 142 N.C. App. 614, 620 (2001) (treating drug trafficking in 14–28 grams as a lesser-included offense of drug trafficking in 28 grams or more).

207. G.S. 14-118.8(g). By its terms, the aggregation provision allows the value of the proceeds to be aggregated only in determining "the classification of the offense." *Id.* But the provision defining the initial financial threshold incorporates the aggregation provision by reference. G.S. 118.8(b) ("aggregated pursuant to subsection (g)").

208. S*ee supra* Section IV.C.3.

209. *See supra* Section IV.C.3; *cf.* G.S. 15A-1340.16F(b).

210. G.S. 14-118.8(e); *cf.* G.S. 14-117.8(d) (fraudulently renting, leasing, or advertising for sale of residential real property); 14-190.17B(a) (restitution for sexual exploitation of a minor).

211. *E.g.*, G.S. 14-33(c); *see also* Joseph L. Hyde, *Some Other Provision of Law*, N.C. Crim. L. Blog (Sept. 9, 2025), nccriminallaw.sog.unc.edu/2025/09/09/some-other-provision-of-law/.

C. Forfeiture

Under the state constitution, "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State . . . shall be faithfully appropriated and used exclusively for maintaining free public schools."[212] This provision applies to the penal laws of this State, "meaning those statutes imposing a monetary payment for their violation and which are punitive rather than remedial in nature."[213] The county school fund is thus entitled to monetary payments that are penal and accrue to the State, regardless of whether the payment is labeled as a payment, forfeiture, or fine, or whether the proceeding is civil or criminal.[214]

Under the forfeiture provision of G.S. 14-118.8, "all property of every kind used or intended for use in the course of, derived from, maintained by, or realized through" money laundering is "subject to forfeiture."[215] Similarly, federal law authorizes the forfeiture of any property involved in money laundering.[216] And many other states' money laundering statutes provide for forfeiture.[217]

Indeed, the Model Act describes civil remedies for money laundering as "the most important parts" of the act.[218] According to the drafters, "[c]ivil remedies are better suited to deter profit-seeking conduct of facilitators because they can be employed in regulatory and reporting contexts, because they can include injunctive and other equitable relief, and because economic

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212. N.C. Const. art. IX, § 7; *cf.* Richmond Cnty. Bd. of Educ. v. Cowell, 243 N.C. App. 116, 119 (2015) (examining the historical context surrounding the adoption of Article IX, Section 7 of the North Carolina Constitution).

213. N.C. Sch. Boards Ass'n v. Moore, 359 N.C. 474, 498 (2005).

214. Mussallam v. Mussallam, 321 N.C. 504, 509 (1988).

215. G.S. 14-118.8(f); *cf.* G.S. 90-112 (money associated with drug offenses subject to forfeiture).

216. *See* 18 U.S.C. §§ 981(a)(1)(A), 982(a)(1); 31 U.S.C. §§ 5317(c), 5332; *see also* Stefan D. Cassella, *The Forfeiture of Property Involved in Money Laundering Offenses*, 7 Buff. Crim. L. Rev. 583, 585 (2004).

217. Some state laws specifically subject criminal proceeds to forfeiture. *See* Ga. Code Ann. § 7-1-916 (subjecting to forfeiture "[a]ll property of every kind used or intended for use in the course of, derived from, or realized through a transaction which . . . involves the proceeds of unlawful activity"); 720 Ill. Comp. Stat. Ann. 5/29B-5 (subjecting to forfeiture "any property, real or personal, constituting, derived from, or traceable to any proceeds the person obtained, directly or indirectly, as a result of a violation"); Iowa Code Ann. § 706B.2 ("property involved in a violation under this chapter is subject to forfeiture"); Mass. Gen. Laws Ann. ch. 267A, § 4 ("All monetary instruments or other property, real, intellectual or personal, obtained directly as a result of a violation . . . shall be subject to forfeiture"); Mont. Code Ann. § 45-6-341 (upon conviction, the court shall order the proceeds forfeited); Tenn. Code Ann. § 39-14-903 ("All assets and proceeds used in violation of or to facilitate a violation . . . shall be subject to seizure and forfeiture."); Wash. Rev. Code Ann. § 9A.83.030 ("Proceeds traceable to or derived from specified unlawful activity . . . are subject to seizure and forfeiture."); W. Va. Code Ann. § 61-15-3 ("Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and forfeited"); *cf.* Ariz. Rev. Stat. Ann. § 13-2317 (pattern of money laundering involving a total of $100,000 or more in any twelve-month period subjects the person to forfeiture of "substitute assets" in an amount three times that involved in the pattern). Other state laws authorize a civil action to recover the value of the proceeds. *See* Ark. Code Ann. § 5-42-204 (authorizing prosecuting attorney to institute a civil action for damages); 18 Pa. Stat. and Cons. Stat. Ann. § 5111 (subjecting a defendant to a civil penalty in the amount of the value of the proceeds or $10,000, whichever is greater).

218. Model Act § 5 cmt.

sanctions remove economic incentive and attack the financial superstructure of ongoing criminal enterprises."[219] In North Carolina, the procedure for forfeiture is as provided in either G.S. 14-2.3 or G.S. 75D-5.[220]

Under G.S. 14-2.3, given any violation of a general statute constituting a felony, any property "acquired thereby" shall be forfeited to the State of North Carolina, "including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender."[221] An action to recover the property shall be brought by a District Attorney or by the Attorney General pursuant to G.S. 1-532, which allows the officer to bring a forfeiture action in any superior court.[222] The forfeiture action must, however, be brought within three years of the date of conviction for the offense.[223] This section does not require forfeiture if the owner of the property involved may readily be identified.[224]

Section 75D-5 authorizes a civil action, known as a RICO forfeiture proceeding, for the forfeiture of "[a]ll property of any kind used . . . , derived from, or realized through a racketeering activity or pattern of racketeering activity."[225] As noted above, the term "racketeering activity" includes money laundering activity covered by G.S. 14-118.8.[226] A RICO forfeiture proceeding may take the form of an *in personam* action against the defendant or an *in rem* action against the property.[227] Such a proceeding may be initiated only by the Attorney General, but the Attorney General may designate any employee of the Department of Justice or any District Attorney to act in his or her stead.[228] Venue for the proceeding lies in any county where an incident of racketeering occurred or property is acquired or maintained.[229] An action under the RICO Act may be commenced within five years after the racketeering activity terminates or the claim for relief accrues, whichever is later.[230]

The forfeiture provision of G.S. 14-118.8 expresses no preference for one procedure over the other, nor does it provide any guidance on how to choose between them. Section 14-2.3, however, provides for forfeiture of gain *acquired through* criminal activity, which may limit its application to certain forms of money laundering.[231] By contrast, civil remedies under the RICO Act are

219. *Id.*

220. G.S. 14-118.8(f).

221. G.S. 14-2.3(a). The statute also includes any violation of G.S. Chapter 14, Article 13A (Criminal Gang Suppression Act) but excludes nonwillful homicide. The forfeiture provision applies except as otherwise provided in Chapter 31A, Article 3 (barring slayer from inheriting property); *see also* State v. Triplett, 70 N.C. App. 341, 343 (1984) ("G.S. 14-2.3 authorizes the forfeiture of property characterized not by its use in a particular crime but as the acquired result of a crime.")

222. G.S. 14-2.3(b) ("pursuant to G.S. 1-532"); 1-532 ("in any superior court").

223. G.S. 14-2.3(b).

224. G.S. 14-2.3(c).

225. G.S. 75D-5(a); *see also* State *ex rel.* Thornburg v. House & Lot Located at 532 B St., Bridgeton, 334 N.C. 290, 295 (1993) (proceeds from sale of RICO forfeited property accrue to the State and must be paid to the public school fund).

226. G.S. 75D-3(8); *see also supra* Section II.

227. G.S. 75D-5(k) (*in personam* action); -5(c) (*in rem* proceeding).

228. G.S. 75D-5(d) ("only by the Attorney General"); G.S. 75D-3(1) (designees of Attorney General); *cf.* G.S. 75D-5(k) ("the State may bring an in personam action").

229. G.S. 75D-12.

230. G.S. 75D-9.

231. G.S. 14-2.3; State v. Triplett, 70 N.C. App. 341, 343 (1984). For example, funds *used in* the commission of criminal activity under G.S. 14-118.8 might not be *acquired through* the commission of criminal activity under G.S. 14-2.3.

cumulative, supplemental, and not exclusive, and are in addition to the fines, penalties, and forfeitures set forth in a final judgment of criminal conviction.[232] This language means that other applicable forfeiture provisions may take precedence over the RICO Act forfeiture provisions.[233] The upshot is that a prosecutor might prefer the forfeiture procedure provided by G.S. 14-2.3 when the particular money laundering at issue indisputably comes within its terms.

VIII. Conclusion

A. A Factual Basis

So, what about Jose Pardo, who abandoned a bag of money and drugs at the Best Buy kiosk? After December 2024, such a defendant might be prosecuted for money laundering under G.S. 14-118.8.

The indictment might allege that the defendant knowingly and willfully possessed the proceeds of criminal activity ($65,000). It might also allege that the defendant knowingly and willfully conducted a transaction involving the proceeds of criminal activity.[234] The indictment would have to allege that the defendant had knowledge of the nature of the criminal activity giving rise to the proceeds.[235]

At trial, the State would have to prove that the $65,000 represents funds acquired or derived from, produced or realized through, or used in the commission of criminal activity.[236] Given that the money and drugs were discovered in the same bag, the State might argue that the money represents the proceeds of drug trafficking and that the defendant's guilty knowledge may be inferred from the circumstances. The defendant would be entitled to a jury determination that he knowingly and willfully committed money laundering, with knowledge of the nature of the criminal activity giving rise to the proceeds, and that the value of the proceeds exceeds ten thousand dollars.[237]

If the defendant is convicted of money laundering, he would be guilty of a Class H felony.[238] If he were prosecuted for both possession and conducting a transaction, the same evidence might support two money laundering convictions.[239] And the proceeds would be subject to forfeiture.[240]

232. G.S. 75D-10.

233. State *ex rel.* Thornburg v. Currency in the Amount of $52,029.00 in U.S. Currency, 324 N.C. 276, 284 (1989) (forfeiture provisions of Controlled Substances Act, under which the defendant had been indicted, took precedence).

234. G.S. 14-118.8(b)(1) (possesses), (b)(2) (conducts a transaction).

235. G.S. 14-118.8(c).

236. G.S. 14-118.8(a)(5).

237. G.S. 14-118.8(b) ("knowingly and willfully"), (c) ("[k]nowledge of the nature of the criminal activity").

238. G.S. 14-118.8(e)(1) (value less than one hundred thousand dollars).

239. G.S. 14-118.8(h) (antimerger provision).

240. G.S. 14-118.8(f) (forfeiture).

B. Money Laundering

According to the drafters of the Model Act, money laundering makes ongoing criminal conduct possible.[241] The drafters envisioned money laundering as a necessary component in the network of interdependent activities that make up illegal drug industries. They anticipated that disrupting that network by targeting launderers—likely sophisticated, professional people such as attorneys, bankers, and accountants—could eliminate the profit motive on which the business thrives. "Concentration on the removal of money launderers," whose specialized skills are difficult to replace, the drafters declared, "will create a bottleneck in the flow of illicit funds."[242]

It remains to be seen whether the enactment of G.S. 14-118.8 in North Carolina will fulfill that optimistic prediction. Admittedly, the statute has some awkward features. A prosecutor might understandably be daunted by the prospect of trying to establish for a jury that the defendant, knowingly and willfully, with knowledge of the nature of the criminal activity giving rise to the proceeds, did attempt to conduct a transaction involving the proceeds of criminal activity, knowing the property involved in the transaction constitutes proceeds of criminal activity with the intent to avoid a transaction reporting requirement under federal law.[243] Not all the categories of money laundering are that complex. Prosecutors have other avenues to obtain a conviction for money laundering in North Carolina, including knowing and willful possession of criminal proceeds.[244]

241. Model Act § 5 cmt.
242. Model Act Policy Statement.
243. G.S. 14-118.8(b)(7).
244. G.S. 14-118.8(b)(1).