administration of justice

Number 99/05 October 1999 **Robert L. Farb, Editor**

1999 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

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As in most sessions, the 1999 General Assembly made numerous changes to the state's criminal laws. The changes were of a more technical nature than in previous sessions, however. Offenses were created and revised, punishments raised, and procedures modified, but few major initiatives were enacted. Perhaps the most groundbreaking legislation this session involved limiting prosecutors' authority over the criminal calendar. The General Assembly also toughened the laws concerning offenses at schools, controlled substances, and impaired driving.

Each ratified act discussed here is identified by its chapter number in the session laws and by the number of the original bill. When an act creates new sections in the General Statutes (G.S.), the section number is given; however, the codifier of statutes may change that number later.

Anyone may obtain a free copy of any bill by writing the Printed Bills Office, State Legislative Building, 16 West Jones Street, Raleigh, NC 27603, or by calling that office at

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(919) 733-5648. Requests should identify the new law's bill number, not the chapter number. Copies of bills also may be obtained from the General Assembly's website, http://www.ncga.state.nc.us/.

Some of the material in this bulletin was drawn from the forthcoming Institute of Government publication NORTH CAROLINA LEGISLATION 1999, which may be viewed on the Institute's website at http://ncinfo.iog.unc.edu/pubs/nclegis/index.html. That publication, as well as other bulletins on recent legislation, may be ordered from the Institute's publications office at (919) 966-4119.

Criminal Offenses

Assaults and Threats

School Personnel and Volunteers. Under G.S. 14-33(c)(5), assaults on school bus personnel have been treated as a more serious class of offense, a Class A1 misdemeanor, than comparable assaults on other persons. Effective for offenses committed on or after December 1, 1999, S.L. 1999-105 (S 637) repeals this section and replaces it with G.S. 14-33(c)(6), which makes it a Class A1 misdemeanor to assault *any* elementary or secondary school employee, volunteer, or independent contractor performing the duties of a school employee. For this greater punishment to apply, the assault must occur either during the discharge of the person's duties or as a result of the discharge of those duties. The term "duties" is defined as activities on school property, activities during a school-authorized event or the accompanying of students to or from such an event, and activities relating to school transportation.

Court Officers. Two little-used statutes—G.S. 14-16.6 and -16.7—have provided for enhanced penalties for assaults and threats against executive or legislative officers. Effective for offenses committed on or after December 1, 1999, S.L. 1999-398 (H 478) expands these statutes to cover court officers as well. A *court officer* is defined under new G.S. 14-16.10 as a magistrate, superior court clerk, acting clerk, assistant or deputy clerk, judge, justice, district attorney or assistant district attorney, public defender or assistant defender, court reporter, or juvenile court counselor.

As amended, G.S. 14-16.6 includes the following assault offenses:

- assault on an executive, legislative, or court officer, a Class I felony;
- a violent attack upon such an officer's residence, office, temporary accommodation, or means of transport in a manner likely to endanger the officer, also a Class I felony;
- assault or violent attack (as defined above) with a deadly weapon, a Class F felony; and
- assault or violent attack (as defined above) inflicting serious bodily injury, a Class F felony.

As amended, G.S. 14-16.7 includes the following threat offenses:

- threatening to inflict serious bodily injury or kill an executive, legislative, or court officer, a Class I felony; and
- depositing in the mail any writing containing a threat to inflict serious bodily injury or kill such an officer, a Class I felony.

G.S. 114-15(a) is also amended to authorize the State Bureau of Investigation to investigate alleged assaults or threats against court officers as well as those against executive or legislative officers.

Child Abuse. G.S. 14-318.4 has provided that a parent or other person caring for a child under age 16 is guilty of felony child abuse, a Class E felony, if the parent or caregiver inflicts serious physical injury on the child. Effective for offenses committed on or after December 1, 1999, S.L. 1999-451 (H 160) amends this statute to provide that a parent or caregiver who inflicts *serious bodily injury* on a child under age 16 is guilty of a Class C felony. Serious bodily injury is defined as bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in other specified consequences involving great harm. This change continues a recent legislative trend of distinguishing between serious injury and serious bodily injury. Compare, for example, G.S. 14-33(c)(1), which makes assault inflicting serious injury a Class A1 misdemeanor, with G.S. 14-32.4, which makes assault inflicting serious bodily injury a Class F felony.

Laser Devices. Effective for offenses committed on or after December 1, 1999, S.L. 1999-401 (S 348) enacts a new statute, G.S. 14-34.8, making it unlawful to intentionally point a laser device at a law enforcement officer, or at the head or face of any other person, while the device is emitting a laser beam. The statute bears the caption "Criminal use of laser device," but a violation is an infraction only, a non-criminal violation of law punishable by a penalty of $100 under G.S. 14-3.1. The new statute provides that it does not prohibit a law enforcement officer, health care professional, or other authorized person from using a laser device in the performance of the person's official duties. Nor does it apply to laser tag, paintball

guns, or similar games or devices using light emitting diode (LED) technology.

Threats Concerning Child, Dependent, Sibling, or Spouse. Effective for offenses committed on or after December 1, 1999, S.L. 1999-262 (S 956) revises two statutes concerning threats. Amended G.S. 14-196(a)(2), which has dealt with threatening telephone calls, makes it a Class 2 misdemeanor to threaten to physically injure a person's child, sibling, spouse, or dependent. The amended statute also prohibits making such threats by telephone *or* e-mail. G.S. 14-277.1, the general statute on communicating threats, is likewise revised to provide that threatening to physically injure a person *or* that person's child, sibling, spouse, or dependent is a Class 1 misdemeanor.

Patient Abuse and Neglect. Effective for offenses committed on or after December 1, 1999, S.L. 1999-334 (S 10), sec. 3.15, amends G.S. 14-32.2 to add a misdemeanor version of the offense of patient abuse and neglect. Previously, all of the offenses under this statute were felonies involving abuse resulting in death or serious injury. New G.S. 14-32.2(b)(4) provides that it is a Class A1 misdemeanor to physically abuse a patient if the conduct is willful or culpably negligent, results in bodily injury, and is part of a pattern of conduct. The act also adds a definition of "abuse" for all offenses under the statute, providing that it means the willful or culpably negligent infliction of physical injury or violation of any law designed for the health, welfare, or comfort of patients.

Controlled Substances, Alcohol, and Cigarettes

Possession of Amphetamine or Methamphetamine. G.S. 90-95(d)(2), which governs the punishment for possession of a Schedule II through IV controlled substance, provides that possession of any amount of cocaine or PCP is a Class I felony. Possession of any other Schedule II through IV substance has been a Class 1 misdemeanor if the amount possessed is less than a certain threshold—for most substances, 100 dosage units. Effective for offenses committed on or after December 1, 1999, S.L. 1999-370 (S 888), sec. 1, significantly enlarges the possession offenses that constitute felonies by providing that possession of any amount of amphetamine or methamphetamine, both Schedule II controlled substances, is a Class I felony.

Drug Trafficking. Two acts deal with drug trafficking. Effective for offenses committed on or after December 1, 1999, S.L. 1999-165 (S 920), sec. 4, creates the offense of trafficking in MDA/MDMA, which stand for methylenedioxyamphetamine and methylenedioxymethamphetamine. Under new G.S. 90-95(h)(4b), the following punishments apply to trafficking in these substances:

- If the amount is from 100 to 499 dosage units or from 28 to 199 grams of these substances, the person is guilty of a Class G drug-trafficking felony (and thus is subject to the mandatory minimum prison sentences for drug trafficking) and must be fined at least $25,000.
- If the amount is from 500 to 999 dosage units or from 200 to 399 grams, the person is guilty of a Class F drug-trafficking felony and must be fined at least $50,000.
- If the amount is 1,000 dosage units or 400 grams or more, the person is guilty of a Class D drug-trafficking felony and must be fined at least $250,000.

Effective for offenses committed on or after December 1, 1999, S.L. 1999-370 (S 888), sec. 1, revises the law on trafficking in amphetamine and methamphetamine. G.S. 90-95(h)(3a), which has addressed trafficking in amphetamine, is repealed, and both amphetamine and methamphetamine are subject to amended G.S. 90-95(h)(3b). This change has two effects. First, under amended subsection (3b), the same threshold amounts for trafficking, expressed in grams, apply to both amphetamine and methamphetamine. Previously, the threshold amounts for amphetamine were expressed in dosage units. Second, the offense class for each level of trafficking is raised by one class. For example, trafficking in 400 or more grams of amphetamine or methamphetamine, formerly a Class D felony, is raised to a Class C felony.

Restitution for Drug Manufacturing Offenses. Effective for offenses committed on or after December 1, 1999, S.L. 1999-370 (S 888), sec. 2, amends G.S. 90-95.3 to provide that the court must require a person convicted of a manufacturing offense to make restitution to law enforcement agencies for the cost of cleaning up a clandestine laboratory.

Controlled Substance and Precursor Chemical Schedules. Effective for offenses committed on or after June 8, 1999, S.L. 1999-165 (S 920), sec. 1–3, makes the following changes to the controlled substance schedules:

- 4-bromo-2, 5-dimethoxyphenethylamine is added to G.S. 90-89(3) (hallucinogenic substances, a form of Schedule I controlled substance);
- cathine, fencamfamin, fenproporex,

mefenorex, and sibutramine are added to G.S. 90-92(a)(3) (stimulants, a form of Schedule IV controlled substance); and
- butorphanol is added to G.S. 90-92(a)(4) (other Schedule IV controlled substances).

Effective for offenses committed on or after December 1, 1999, S.L. 1999-370 (S 888), sec. 1 and 3, makes the following changes to the controlled substance and precursor chemical schedules:

- ketamine is added to G.S. 90-91 (Schedule III controlled substances); and
- anhydrous ammonia, iodine, lithium, red phosphorous, and sodium are added to G.S. 90-95(d2) (precursor chemicals).

Alcohol Sales to Underage Person. Effective for offenses committed on or after December 1, 1999, S.L. 1999-433 (S 120) imposes mandatory fines and community service for violations of G.S. 18B-302(a), which prohibits selling alcohol to a person under age 21, and G.S. 18B-302(c)(2), which prohibits a person over 21 from aiding or abetting the purchase or possession of alcohol by an underage person. Both offenses remain Class 1 misdemeanors. But, under new G.S. 18B-302A, the court must make the following a part of any sentence if it does not impose a term of active imprisonment:

- for a violation of G.S. 18B-302(a), at least a $250 fine and 25 hours of community service for a first conviction and at least a $500 fine and 150 hours of community service if the violation occurs within four years of a previous conviction for this offense; and
- for a violation of G.S. 18B-302(c)(2), at least a $500 fine and 25 hours of community service for a first conviction and at least a $1,000 fine and 150 hours of community service if the violation occurs within four years of a previous conviction for this offense.

Alcohol Violations by Underage Person. Effective for offenses committed on or after December 1, 1999, S.L. 1999-406 (H 1135), sec. 7, amends G.S. 18B-302(i) to increase from an infraction to a Class 3 misdemeanor the purchase or possession of beer or wine by a 19- or 20-year old. As a result of the change, if the offense involves purchase or attempted purchase, a one-year revocation of the person's driver's license is apparently required under G.S. 18B-302(g) and 20-17.3. In addition, section 8 of the act amends G.S. 15A-145 to allow a conviction for possession of beer or wine in violation of G.S. 18B-302(b)(1) to be expunged in certain circumstances.

Cigarette Sales. Effective for offenses committed on or after December 1, 1999, S.L. 1999-333 (H 74), sec. 5, makes it a Class A1 misdemeanor for a person to sell or hold for sale packages of cigarettes that meet one or more of the descriptions in new G.S. 14-400.18. For example, the new statute prohibits the sale of packages of cigarettes that do not contain the labels, warnings, and other information required by federal law. A violation of the new statute also constitutes an unfair trade practice, and the packages of cigarettes may be seized as contraband under the procedure for seizure of non-tax-paid cigarettes. Under new G.S. 105-113.4B and amended G.S. 105-164.29(d), a seller's license also may be revoked.

Explosives and Firearms

Bomb Threats and Hoaxes. Effective for offenses committed on or after September 1, 1999, S.L. 1999-257 (H 517) raises the punishment for making a false bomb threat concerning a "public building," which is defined in new G.S. 14-69.1(c) as:

- educational property (owned by a public or private school);
- a hospital;
- a building housing only state, federal, or local government offices; and
- state, federal, or local government offices within any building.

A first conviction for a false bomb threat concerning a public building is the same class of offense as a conviction concerning other structures—that is, a Class H felony. A second conviction within five years concerning a public building, however, is a Class G felony. New G.S. 14-69.1(d) also provides that the court may order a person convicted of making a false bomb threat, whether it concerns a public building or another structure, to pay restitution for disruption of normal activities on the premises. The act makes the same changes—concerning both offense class and restitution—to G.S. 14-69.2, which deals with perpetrating a hoax by use of a false bomb.

Possession of Explosives on School Property. G.S. 14-269.2 has prohibited the possession of firearms and explosives on school property, making most such offenses a Class I felony. Effective for offenses committed on or after September 1, 1999, S.L. 1999-257 (H 517) increases from a Class I to

Class G felony the offense of possessing or carrying a dynamite cartridge, bomb, grenade, mine, or other powerful explosive on educational property. This provision, contained in new G.S. 14-269.2(b1), also applies to possession of explosives at curricular or extracurricular activities sponsored by a school off school property (but only for offenses committed on or after December 1, 1999). The act likewise raises from a Class I to Class G felony the offense of aiding a minor (a person under age 18) to possess or carry an explosive on educational property; however, that provision, which appears in new G.S. 14-269.2(c1), makes no reference to curricular or extracurricular activities off school property.

Fireworks are not covered by these new subsections of G.S. 14-269.2. But the act adds fireworks to the list of items prohibited on educational property under G.S. 14-269.2(d) and (e) (previously, the list included only weapons or things capable of being used as weapons). Effective for offenses committed on or after September 1, 1999, it is a Class 1 misdemeanor to possess or carry, or aid a minor to possess or carry, fireworks on educational property unless for an authorized purpose.

Firearms on School Property. Effective for offenses committed on or after December 1, 1999, S.L. 1999-211 (S 1096) expands the prohibition on firearms on school property. First, G.S. 14-269.2(b) is revised to make it a Class I felony to possess or carry a firearm on educational property *and* at curricular or extracurricular activities sponsored by a school off school property.

Second, G.S. 14-269.2(f), which in limited circumstances makes it a Class 1 misdemeanor instead of a felony to have a firearm on educational property, is narrowed further. Under the revised section, a person is guilty of the lower class of offense only if (1) the person is neither a student nor an employee at the school and (2) the firearm is unloaded, is in a locked firearm rack or locked container, and is inside a motor vehicle. The principal effect of the revisions is to make the unauthorized possession of a firearm by an employee while on school property or at a school-sponsored event a Class I felony.

New G.S. 14-269.2(h) is also added to clarify that a person is not guilty of possession of a weapon on school grounds or at a school-sponsored activity off school grounds if he or she takes or receives the weapon from another person, or finds the weapon, and then delivers the weapon, directly or indirectly, to law enforcement.

License Consequences of Offenses Involving Explosives. Several acts impose consequences beyond the potential criminal sentence for offenses involving explosives and firearms, particularly for offenses involving schools.

Effective for offenses committed on or after September 1, 1999,[1] S.L. 1999-257 (H 517) requires the Division of Motor Vehicles (DMV) to revoke a person's driver's license if he or she is convicted of one of a number of offenses involving explosives. The listed convictions, set forth in new G.S. 20-17(a)(15), include offenses concerning educational property as well as general offenses involving explosives. The revocation lasts one year (pursuant to G.S. 20-19(f)).

New G.S. 20-13.2(c2) likewise requires DMV, upon learning of a conviction of one of the specified offenses, to revoke the permit or license of a person under age 18. The revocation lasts one year (pursuant to G.S. 20-13.2(d)). This revocation differs from the loss of license eligibility imposed for certain acts by students, discussed below under Offenses Concerning Schools.

Imposition of license consequences for conduct unrelated to driving or to motor vehicles continues a recent legislative trend. For example, G.S. 110-142.2, enacted in 1997, allows courts to revoke a person's driver's, hunting, fishing, occupational, and professional licenses if he or she willfully fails to make court-ordered child support payments. G.S. 143B-475.1(f), enacted in 1998, authorizes courts to revoke a person's driver's license for a willful failure to perform community service, regardless of whether the offense involves motor vehicles. These provisions are intended to induce compliance with unmet obligations. Once a person meets his or her obligations, either in the child support or community service arena, the license revocation ends.[2] In contrast, the revocation required by S.L. 1999-257 is for a fixed period and is imposed automatically on conviction of one of the specified offenses.

If ever challenged, such revocations may be measured by various constitutional standards. *See*

1. The act actually states that the license consequences apply to "causes of action" arising on or after that date. In using this language, the drafters apparently mistook the sections on license consequences with another section of the act involving civil liability, discussed further below.

2. This session, in S.L. 1999-293 (H 302), the General Assembly amended G.S. 110-142.2 to require the court to revoke a person's licenses if he or she is found in civil or criminal contempt for failing to pay court-ordered child support for a third or subsequent time. The revocation still may be stayed, however, if the court imposes a repayment plan meeting certain conditions, and the revocation ends when the person is no longer delinquent in his or her child support payments.

generally Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) (under Due Process clause, particular disqualification must bear rational connection to person's fitness to perform function involved); *State v. Oliver*, 343 N.C. 202, 470 S.E.2d 16 (1996) (discussing potential applicability of Double Jeopardy clause to license revocations); STEVENS H. CLARKE, LAW OF SENTENCING, PROBATION, AND PAROLE IN NORTH CAROLINA 18–19 (Institute of Government, 2d ed. 1997) (discussing state constitutional limits on punishment).

Civil Liability for Offenses Involving Firearms or Explosives. Effective for offenses committed on or after September 1, 1999, S.L. 1999-257 (H 517) provides that a parent or legal guardian of a minor may be held civilly liable to a public or private school if the minor violates one of a number of laws relating to possession or use of explosives or firearms. New G.S. 1-538.3 details the circumstances under which such liability may arise. It also describes the damages that a school may recover (up to $50,000 in some cases).

Mandatory Suspension of Students. G.S. 115C-391(d1) has required a 365-day suspension of any student who possesses a firearm or explosive on educational property (subject to modification on a case-by-case basis). Effective August 4, 1999, S.L. 1999-387 (H 1154) revises that section to require a suspension of the same length of any student who possesses a firearm or explosive at a school-sponsored activity, whether on or off school property. Effective July 7, 1999, new G.S. 115C-391(d3) (enacted by S.L. 1999-257 (H 517)) requires a 365-day suspension of any student who makes a false bomb threat or perpetrates a hoax by use of a false bomb in connection with educational property or a school-sponsored activity (again, subject to modification on a case-by-case basis).

Offenses Concerning Schools

Several acts discussed earlier deal with schools (under the headings Assaults and Threats; and Explosives and Firearms). In addition to that legislation, the following also concern schools.

Indecent Liberties and Sexual Offenses with a Student. North Carolina has had two statutes on the taking of indecent liberties with a child. One, G.S. 14-202.1, prohibits acts of a sexual nature when (1) the perpetrator is 16 years of age or more, (2) the victim is under the age of 16, and (3) the perpetrator is at least five years older than the victim. The other, G.S. 14-202.2, prohibits similar acts when (1) both the perpetrator and the victim are under age 16 and (2) the perpetrator is at least three years older than the victim.

Effective for offenses committed on or after December 1, 1999, S.L. 1999-300 (S 742) creates another set of indecent liberties offenses, applicable to acts of a sexual nature by school personnel with a student at a public or private elementary or secondary school. The definition of indecent liberties is essentially the same as the definition in G.S. 14-202.1 and -202.2, except it does not cover acts of vaginal intercourse or sexual acts as defined in G.S. 14-27.1 (for example, fellatio). But another new set of sexual offenses, also created by S.L. 1999-300, covers such acts with elementary or secondary school students. For all of these new offenses, the conduct must have occurred during or after the time the defendant and victim were at the same school but before the victim ceases to be a student.

A teacher, school administrator, student teacher, or coach is guilty of a Class I felony if he or she takes indecent liberties with an elementary or secondary school student. *See* G.S. 14-202.4(a). Such a person is guilty of a Class G felony if the act is vaginal intercourse or a sexual act as defined in G.S. 14-27.1. *See* G.S. 14-27.7(b). Age is not relevant for either offense.

Other school personnel and volunteers at a school or at a school-sponsored activity are also subject to prosecution for taking indecent liberties or engaging in intercourse or a sexual act with an elementary or secondary school student. Age is a relevant factor, however. If the school employee or volunteer is four or more years older than the student, the indecent liberties offense is a Class I felony and the offense involving intercourse or a sexual act is a Class G felony. *See* G.S. 14-202.4(a), -27.7(b). If the age difference is less than four years, both offenses are Class A1 misdemeanors. *See* G.S. 14-202.4(b), -27.7(b).

The act states that a person who engages in the above conduct is guilty of the level of offense specified unless the conduct is covered by another law providing for greater punishment. *See* G.S. 14-202.4(a), -27.7(b). Thus, a school employee could be convicted of statutory rape, a Class B1 felony, for having vaginal intercourse with a student if the ages of the employee and student meet the requirements for that offense. But the employee could not be convicted of both statutory rape and one of the offenses described above.

Eligibility for Driver's License. In 1997, the General Assembly amended G.S. 20-11 by providing that persons under age 18 seeking a learner's permit or provisional driver's license must have a "driving eligibility certificate" or a high school diploma or its

equivalent. Ordinarily, to qualify for a driving eligibility certificate, a minor must be enrolled in high school and be making progress toward a high school diploma.

S.L. 1999-243 (S 57) adds another requirement for issuance of a driving eligibility certificate. New G.S. 20-11(n1), captioned as "Lose Control; Lose License," enumerates the following conduct as grounds for a school's denial of a driving eligibility certificate to a student:

1. possession or sale of an alcoholic beverage or illegal controlled substance on school property resulting in disciplinary action as defined in G.S. 20-11(n1)c (that is, expulsion or suspension or assignment to an alternative educational setting for more than ten consecutive days);
2. possession or use of a firearm or explosive on school property resulting in disciplinary action under G.S. 115C-391(d1) (that is, a 365-day suspension) or that could have resulted in such disciplinary action if the conduct had occurred in a public school; and
3. physical assault on a teacher or other school personnel on school property resulting in disciplinary action as defined in G.S. 20-11(n1)c (discussed under 1., above).

The disqualification applies only if the conduct occurs after the student turns 14 years of age or, if the student has not yet turned 14, after July 1 of the school year in which the student enrolls in eighth grade. Upon receiving notice from a school that a person is not eligible for a driving eligibility certificate, DMV must revoke the person's permit or license. The length of ineligibility and revocation depend on the factors described in G.S. 20-11(n1)(3) and (4) and G.S. 20-13.2(c1). The act applies to acts committed on or after July 1, 2000.[3]

Frauds

Financial Identity Fraud. Effective for offenses committed on or after December 1, 1999, S.L. 1999-449 (H 1279) creates the crime of financial identity fraud (in new G.S. 14-113.20 through -113.23). A person is guilty of this offense if he or she:

1. knowingly obtains, possesses, or uses
2. personal identifying information of another person, such as a social security, driver's license, or credit card number,
3. without the consent of the other person
4. with the intent to fraudulently represent that the person is the other person
5. for the purpose of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences.

The offense is ordinarily a Class H felony. It is a Class G felony if the victim (that is, the person whose personal identifying information is fraudulently used) is arrested, detained, or convicted as a result of the offense.

The new statutes also provide for civil remedies. The victim may bring a civil suit for damages of up to $5,000 or three times the amount of actual damages, whichever is greater, for each incident. The victim also may seek injunctive relief. In such actions, the court may award reasonable attorneys' fees to the prevailing party.

Child Care Subsidy Fraud. Effective for offenses committed on or after December 1, 1999, S.L. 1999-279 (H 304) creates the crime of fraudulent misrepresentation concerning child care subsidies. Under new G.S. 110-107, a person is guilty of this offense if he or she:

1. with the intent to deceive
2. makes a false statement regarding a material fact or fails to disclose a material fact, and
3. as result of the false statement or omission that person obtains, attempts to obtain, or continues to receive a child care subsidy.

The offense is a Class I felony if the amount of the child care subsidy is more than $1,000 and a Class 1 misdemeanor if the amount is $1,000 or less. As an incentive for counties to investigate child care fraud, new G.S. 110-108 provides that local purchasing agencies retain the amount of fraud and overpayment claims that they collect (this part of the act is effective July 1, 1999).

Insurance Fraud. Effective for offenses committed on or after October 1, 1999, S.L. 1999-294 (S 594), sec. 3, broadens the definition of insurer for purposes of insurance fraud offenses under G.S. 58-2-161. The revised definition, in G.S. 58-2-161(a)(1), includes those types of insurers listed in that section

3. In an unrelated act, S.L. 1999-276 (H 1263), the General Assembly amended G.S. 20-11 to clarify the circumstances under which persons under age 18 who have a license issued by the federal government may obtain a limited or full provisional license in North Carolina.

and those entities covered by the general definition of insurer in G.S. 58-1-5(3).

Worthless Checks

Worthless Check Prosecutions. G.S. 14-107(1) (now, (d)(1)) has governed worthless check offenses involving amounts of $100 or less; G.S. 14-107(2) has governed worthless check offenses involving amounts of $100 to $2,000. The two subsections, however, have provided for identical penalties. Thus, writing a worthless check of $2,000 or less is ordinarily a Class 2 misdemeanor. Effective for offenses committed on or after December 1, 1999, S.L. 1999-408 (H 328) eliminates this redundancy by repealing subsection (2) and incorporating the deleted portions into subsection (1). The penalties for writing a worthless check of $2,000 or less remain unchanged.

The act also revises G.S. 14-107(4) (now, (d)(4)) to clarify the elements of the offense of writing a worthless check on a closed account. A person is guilty of this offense, a Class 1 misdemeanor, by writing a check on an account that has been closed by the drawer *or* that the drawer knows to have been closed by the bank or depository.

Collection of Worthless Checks without Prosecution. In 1997 and 1998 the General Assembly authorized pilot programs in Columbus, Durham, Rockingham, and Wake Counties for collection of worthless checks without criminal prosecution. The authority for the pilots was to expire June 30, 1999. Effective that date, S.L. 1999-237 (H 168), sec. 17.7, continues the programs indefinitely and also authorizes similar programs in Brunswick, Bladen, New Hanover, and Pender counties.

To participate in the program, the "check passer" must meet the criteria established by the local district attorney and must pay a fee of $50. A participating "check passer" may not be prosecuted if he or she makes restitution to the "check taker" for the amount of the check, any service charges imposed by a bank on the check taker for processing the check, and any processing fees imposed by the check taker under G.S. 25-3-506.

Other Property Offenses

Computer Trespass. Effective for offenses committed on or after December 1, 1999, S.L. 1999-212 (S 288) creates the offense of computer trespass. The caption of the legislation states that it makes unlawful the sending of unsolicited bulk commercial e-mail, but it actually encompasses at least six different kinds of conduct, not all of which necessarily involve e-mail.

New G.S. 14-458 makes it unlawful for any person to use a computer or computer network without authority and with the intent to do one of six things—for example, altering or erasing computer data, programs, or software or making an unauthorized copy of those materials. Only one of the six prohibited acts specifically concerns e-mail—in essence, falsely identifying unsolicited bulk commercial e-mail with the intent to deceive the recipient. The General Assembly's concern over this type of e-mail is also expressed, however, in its definition of the term "without authority," an element of all the offense variations. A person acts "without authority" when he or she does not have the right to use someone's computer *or* uses a computer, computer network, or computer services of an e-mail service provider to transmit unsolicited bulk commercial e-mail in violation of the service provider's rules.

A violation of the new statute is a Class 3 misdemeanor if there is no property damage, a Class 1 misdemeanor if there is property damage of less than $2,500, and a Class I felony if there is property damage of $2,500 or more. A person injured by a violation also may sue for damages under new G.S. 1-539.2A.

Larceny of Ginseng. Effective for offenses committed on or after December 1, 1999, S.L. 1999-107 (S 769) revises G.S. 14-79 concerning larceny of ginseng, a Class H felony, by eliminating the requirements that the ginseng must have been in a bed and that the land on which the bed is located must have been surrounded by a lawful fence.

Miscellaneous Offenses

Cruelty to Animals. Effective June 24, 1999, S.L. 1999-209 (S 249), sec. 8, clarifies the definition of "animal" for purposes of the offense of cruelty to animals. As amended, G.S. 14-360(c) provides that the term includes living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia only. In other words, fish are not covered (although frogs, which are in the Amphibia class, are covered). The amended section also states that the statute does not bar lawful activities concerning aquatic species or activities conducted for the primary purpose of providing food.

Tax Violations. S.L. 1999-415 (H 1476) extends from three to six years the statute of limitations for violations of G.S. 105-236(8) (willful failure to collect, withhold, or pay over tax) and G.S. 105-236(9) (willful

failure to file return, supply information, or pay tax). These changes apply to prosecutions brought on or after December 1, 1999, if the previous three-year statute of limitations has not expired before that date.

Personal Watercraft. Effective for acts committed on or after December 1, 1999, S.L. 1999-447 (H 1209) makes several changes to the laws concerning use of personal watercraft, also known as "jet skis." G.S. 75A-13.2, the previous state-wide law on personal watercraft, is repealed. G.S. 75A-13.3, which previously applied only to certain waters, is expanded to apply to the entire state and to impose some restrictions on the use of personal watercraft. For example, a person 12 years of age or older may operate a personal watercraft if he or she has a boater safety certification card issued by the Wildlife Resources Commission or has proof of completion of a boating safety course; operators 16 years of age or older are not subject to this requirement. The statute allows local governments to impose stricter rules.

In most instances, a violation of G.S. 75A-13.3 is a Class 3 misdemeanor, punishable by a fine only (up to $250) under G.S. 75A-18. New G.S. 75A-18(c1) provides that a boat livery that fails to carry the required liability insurance is guilty of a Class 2 misdemeanor, also punishable by a fine only (up to $1,000).

Littering. Effective for offenses committed on or after December 1, 1999, S.L. 1999-454 (H 222) provides for minimum and maximum fines for littering offenses as follows:

- For a first violation of G.S. 14-399(c) (littering in an amount up to 15 pounds and not for a commercial purpose), the fine is from $250 to $1,000; for a second violation within three years, the fine is from $500 to $2,000.
- For a violation of G.S. 14-399(d) (littering in an amount from 15 to 500 pounds and not for a commercial purpose), the fine is from $500 to $2,000.

For a violation of G.S. 14-399(e) (littering in an amount exceeding 500 pounds or for a commercial purpose or of a hazardous waste), the court must impose one or more of the conditions stated in that section—for example, removing the litter or rendering it harmless. Previously, these conditions were discretionary.

Vacation Rentals. New Chapter 42A of the General Statutes, enacted by S.L. 1999-420 (S 974), regulates the rental of residential property for vacation, leisure, or recreational purposes. Among other things, the new chapter allows landlords, and real estate brokers acting as agents of landlords, to use an expedited eviction procedure in limited circumstances. New G.S. 42A-27 states that a landlord or broker may use the expedited procedure only when he or she has a good faith belief that grounds exist for its use; otherwise, the landlord or broker is guilty of a Class 1 misdemeanor (and an unfair trade practice under G.S. 75-1.1). The act applies to rental agreements entered into on or after January 1, 2000.

Civil and Criminal Contempt. S.L. 1999-361 (S 170) deals primarily with civil contempt, but it also makes minor changes to the rules on criminal contempt. G.S. 5A-12(d) and -21(c) have provided that a person may be held in civil and criminal contempt for the same conduct but may not be imprisoned for longer than authorized for the version of contempt that has the greater period of imprisonment. Effective for proceedings for contempt held on or after December 1, 1999, the act amends those statutes to state that a person may not be held in civil and criminal contempt for the same conduct.

Designation of Offense Classes. With the implementation of structured sentencing in 1994, most offenses were assigned offense classes; however, some were overlooked. Effective for offenses committed on or after December 1, 1999, S.L. 1999-408 (H 328) assigns classes to several offenses. The only offense in G.S. Ch. 14 addressed by the legislation is acting as officer before qualifying as such, a violation of G.S. 14-229, which is designated as a Class 1 misdemeanor. The other revised statutes all deal with regulatory offenses involving animals or animal products.

Criminal Procedure

Criminal Calendaring

Unique among the fifty states, North Carolina has allowed prosecutors control over the calendaring of felony cases—that is, they have had the power to decide when a felony goes to trial. For several years such authority has been the subject of litigation and proposed legislation as well as considerable debate.

Effective January 1, 2000, S.L. 1999-428 (S 292) introduces various devices that constrain this authority. Prosecutors retain some control over the calendar; among other things, they retain the power to prepare the trial calendar itself. But, the act involves judges in

the scheduling of cases to be placed on the calendar and gives defense counsel considerably more input into and notice of trial dates.

Local Plans. New G.S. 7A-49.4 contains the new rules on calendaring, which apply to cases pending in superior court. The statute divides calendaring into three separate phases, which deal with administrative settings, issuance of trial calendars, and calling of cases for trial and which have their own deadlines and other restrictions.

By January 1, 2000, each district attorney must develop a local case docketing plan with input from the local judges and bar. *See* G.S. 7A-49.4(a). At a minimum, the local plan must comply with the provisions of G.S. 7A-49.4. It also may contain additional calendaring rules if not inconsistent with those provisions. The mandatory aspects of G.S. 7A-49.4 are discussed below.

Administrative Settings and Scheduling of Initial Trial Dates. G.S. 7A-49.4(b) through (d) deal with preliminary proceedings in felony cases and the scheduling of initial trial dates. An administrative hearing, called an administrative setting, must be held in every felony case within sixty days of indictment or service of notice of indictment (or at the next regularly scheduled superior court session if one has not been held within the sixty day period). At that hearing, or setting, the judge must set any necessary deadlines for discovery, arraignment, and the filing of motions. If the prosecutor has made a plea offer, the judge may conduct a plea conference. The judge also may hear pending pretrial motions, set such motions for hearing for a later date, or defer ruling on motions until trial of the case. The statute establishes a preference for resident judges to preside at the administrative setting, but other judges may preside as well.

The statute requires only one administrative setting but local plans may provide for multiple settings. The court also may schedule additional administrative settings as needed. Administrative settings may be held anywhere within a district, but a defendant may be required to attend only if the setting is in the county where the case originated.

If the parties have not agreed on a trial date by the final administrative setting, then at the final setting the prosecutor must propose a trial date. After hearing from the parties, the court may set that date as the tentative trial date or reject it, in which event the prosecutor must propose another date. Presumably, the court may reject that date and any additional dates until a satisfactory date is selected.

The statute contains additional time limits on the scheduling of the initial trial date. Unless the defendant and state agree, the trial date may not be less than thirty days after the final administrative setting. *See* G.S. 7A-49.4(b). If a case has not been scheduled for trial within 120 days of indictment or of service of notice of indictment, the defendant may apply to the senior resident judge (or a superior court judge designated by the senior resident), who must hold a hearing for the purpose of establishing a definite trial date. *See* G.S. 7A-49.4(c).

The statute apparently does not require administrative settings in misdemeanor cases appealed to superior court for a trial de novo because an indictment, which triggers the administrative setting, is not brought in such cases. Thus, neither the thirty-day rule (precluding trials within thirty days of the last administrative setting) nor the 120-day rule (allowing defendants to apply for a trial date if one has not been set within 120 days of indictment) appear to apply to misdemeanors appealed for a trial de novo. But, such cases still are subject to the rules on trial calendars and calling of cases for trial, discussed below. In addition to those minimum requirements, local plans may contain additional rules for the handling of misdemeanors appealed for trial de novo.

Trial Calendars. G.S. 7A-49.4(e) governs preparation of the superior court trial calendar. Under that section, prosecutors retain the responsibility of preparing and publishing the trial calendar but subject to several new restrictions. The prosecutor must publish the trial calendar at least ten working days before the cases on the calendar are to be tried. The calendar must list cases in the anticipated order of trial or disposition.

Whether the prosecutor may place a particular felony case on the calendar is determined in large part by the final administrative setting for that case. The prosecutor may include on the calendar those felony cases previously scheduled for that session at the final administrative setting; he or she may not unilaterally add felony cases to the calendar.

A prosecutor may have the discretion, however, not to put on the calendar all of the felony cases scheduled for that session. G.S. 7A-49.4(e) states that the calendar "should not contain cases that the district attorney does not reasonably expect to be called for trial." This language may mean only that in proposing trial dates at the final administrative setting, prosecutors should endeavor not to schedule too many cases for any particular session. In addition, it may mean that in preparing the calendar prosecutors have the responsibility to remove felony cases that cannot reasonably be reached. (A prosecutor may not have the authority to drop a case, however, if the court has set a definite trial date under new G.S. 7A-49.4(c), discussed above.)

The statute does not specify how removed cases are to be rescheduled. But, in light of the general scheduling procedures and the rules for continuing cases, discussed below, the prosecutor would appear to have to consult with the defendant in setting a new date; and, if the parties disagree, a judge ultimately may determine the date, as at the final administrative setting. Any new date also would appear to be subject to the ten-day rule—that is, without agreement of the parties, the calendar containing the rescheduled case would have to be issued at least ten working days before the session at which the case is to be tried.

The calendar also may include misdemeanors appealed for trial de novo. At least initially, the prosecutor apparently may schedule such cases for trial without conferring with defense counsel or obtaining the approval of a judge (unless the local plan provides otherwise). Such cases appear to be subject to the ten-day rule, however. Also, once a misdemeanor is placed on the calendar, it is subject to the rules on continuing cases, discussed below.

Calling Cases for Trial. G.S. 7A-49.4(f) provides that at each session of court the prosecutor must announce the order in which he or she intends to call for trial the cases on the calendar. Deviations from the announced order require approval of the presiding judge if the defendant objects; however, the defendant does not have grounds to object if all the cases to be heard before the defendant's case have been disposed of or delayed with the approval of the judge or consent of the parties.

Cases that have been placed on the trial calendar may be continued only with the consent of the prosecutor and defendant or by order of the judge. If all of the cases on the calendar are not reached before the end of the session of court, the prosecutor must schedule a new trial date in consultation with the defendant. If the prosecutor and defendant cannot agree on a new trial date, the judge presumably may determine the trial date.

Miscellaneous. G.S. 7A-49.4(g) provides that the statute should not be construed to deprive victims of the rights granted under the North Carolina Constitution and Victims' Rights Act (G.S. 15A-830 through -841).

G.S. 7A-49.4(h) provides that the statute should not be construed to affect the court's authority in the call of cases calendared for trial. This language is similar to language in G.S. 7A-49.3, the former statute on calendaring, which is repealed.

Last, G.S. 7A-61, which describes the duties of district attorneys, is amended to provide that district attorneys must prosecute actions *in a timely manner* (new language in italics).

Evidence

Impeachment by Prior Conviction. Rule 609(a) of the North Carolina Rules of Evidence has provided that for purposes of impeaching a witness—that is, attacking his or her credibility—evidence of a prior conviction of a crime punishable by more than 60 days confinement is admissible. Effective December 1, 1999, S.L. 1999-79 (H 818) modifies Rule 609(a) to allow impeachment by a conviction of any felony or any Class A1, Class 1, or Class 2 misdemeanor; the language requiring a minimum term of confinement is deleted. (The act does not alter other aspects of Rule 609—for example, that the conviction must have occurred within the previous ten years.)

This change has one, possibly two effects. First, by including Class 2 misdemeanors, the rule expands the offenses that may be used for impeachment purposes. Since implementation of structured sentencing in 1994, offenses classified as Class 2 misdemeanors have not been a proper subject of impeachment because they are punishable by up to but not more than 60 days confinement.

Second, the revised rule may bar impeachment by misdemeanors that are not subject to structured sentencing, the main one being misdemeanor impaired driving under G.S. 20-138.1. The punishment for that offense may include confinement of more than 60 days. But, in light of the revised language, which makes offense classification and not length of confinement the criterion for impeachment by a prior conviction, the rule may bar use of these offenses for impeachment purposes.[4]

The act is silent on the use of convictions of misdemeanors committed before the effective date of structured sentencing, which also have no classification. For purposes of determining a person's potential sentence under structured sentencing, a prior conviction is classified according to its classification at the time the current offense was committed. *See* G.S.

4. G.S. 14-3(a) contains a default provision, based on length of imprisonment, for misdemeanors that do not have a specific classification under structured sentencing. Thus, under G.S. 14-3(a), an offense is considered a Class 1 misdemeanor if the maximum punishment is more than six months imprisonment, a Class 2 misdemeanor if the maximum punishment is more than 30 days but not more than six months imprisonment, and a Class 3 misdemeanor if the maximum punishment is 30 days imprisonment or less or a fine. This provision may be inapplicable to misdemeanor impaired driving, however, because G.S. 15A-1340.10 expressly excludes that offense from the operation of structured sentencing.

15A-1340.14(c), -1340.21(b). Whether this principle applies to the use of prior convictions for impeachment purposes is unclear.

The act also does not address out-of-state misdemeanor convictions, which at least for structured sentencing purposes are usually treated as Class 3 misdemeanors. *See* G.S. 15A-1340.14(e).

Privileges. The General Assembly created two evidentiary privileges this session. S.L. 1999-267 (S 1009) enacts a new statute, G.S. 8-53.9, establishing a qualified privilege against disclosure of information, documents, and other items obtained or prepared by a journalist while acting in that capacity. The act reverses appellate decisions refusing to recognize a qualified privilege for journalists. *See In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999).

A person seeking to compel a journalist to reveal such information may overcome the privilege if he or she establishes that the information is relevant and material to the legal proceeding, cannot be obtained from an alternate source, and is essential to the person's claim or defense. An order requiring disclosure may be issued only after notice to the journalist and a hearing and must be supported by specific findings. The new statute also states that the privilege does not protect information, documents, or other items obtained as the result of the journalist's eyewitness observations of criminal or tortious conduct, including any visual or audio recording of the observed conduct. The act applies to information, documents, or items obtained or prepared on or after October 1, 1999.

S.L. 1999-374 (S 995) creates a second new statute, G.S. 8-53.10, protecting from disclosure communications by law enforcement employees and their immediate families to police peer counselors during counseling. Disclosure of privileged communications is permissible if the employee authorizes disclosure or a judge of the court in which the case is pending finds that disclosure is necessary to a proper administration of justice. The new statute also identifies certain circumstances in which the privilege does not apply—for example, if the communication concerns a violation of criminal law. The new statute states that the privilege is not grounds for failing to report child abuse or neglect or the need of a disabled adult for protective services; nor is the privilege grounds for excluding evidence concerning those matters in any judicial proceeding related to such a report. The act applies to proceedings pending on or after December 1, 1999.

Admissibility of Records Stored on CD-ROM. Generally, photographic reproductions of records are as admissible in legal proceedings as the originals of the records. S.L. 1999-131 (S 1021), as amended by S.L. 1999-456 (H 162), sec. 47, revises several statutes to clarify that records stored on permanent, computer-readable media, such as CD-ROM, are admissible if not subject to erasure or alteration. The affected statutes are: G.S. 8-45.1 (business records); G.S. 8-45.3 (Department of Revenue records); G.S. 8-34 (official writings); G.S. 153A-436 (county records); and G.S. 160A-490 (city records). The act applies to proceedings pending on or after December 1, 1999.

Law Enforcement Procedures

Traffic Law Enforcement Statistics. Apparently concerned about possible racial profiling in the stopping of vehicles—that is, the stopping of vehicles based on the race or ethnicity of the drivers or passengers—the General Assembly passed legislation requiring the Department of Justice to collect information on traffic stops made by state law enforcement officers, such as the North Carolina State Highway Patrol. Effective for law enforcement actions occurring on or after January 1, 2000, S.L. 1999-26 (S 76) amends G.S. 114-10 to require the Division of Criminal Statistics of the Department of Justice to keep fourteen different categories of information on traffic stops, including among other things the number of drivers stopped for routine traffic enforcement; the race, age, and sex of the drivers stopped; the alleged traffic violation that led to the stop; whether a search was instituted; and whether the officers used force against the driver or passengers. This information also must be collected in connection with vehicle stops at impaired driving checkpoints and other roadblocks conducted by state law-enforcement officers if the stops result in a warning, search, seizure, arrest, or certain other listed actions.

The act does not specify the persons entitled to obtain the information collected. Generally, unless a specific statutory exception exists, records maintained by state and local government agencies are public records. *See generally News and Observer Publishing Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992).

Tracing of Firearms. S.L. 1999-225 (H 1192) requires the Division of Criminal Statistics to collect data to trace firearms seized, forfeited, found, or otherwise in the possession of any law enforcement agency that are believed to have been used in the commission of a crime. These amendments to G.S. 14-110 are effective June 25, 1999.

Arrest on Private Premises. G.S. 15A-401(e)(1) has provided that officers seeking to enter private

premises or a vehicle to arrest a person must have in their possession a warrant or order for arrest (unless the officers are authorized to enter without a warrant). Effective October 1, 1999, S.L. 1999-399 (H 685) modifies this statute to allow officers who are in possession of a copy of a warrant or arrest order to enter such areas if the original warrant or order is in the possession of a law enforcement agency in the county where the officer is employed and the officer verifies that the warrant is current and valid.

No changes were made to the rules on service of arrest warrants. Consequently, under G.S. 15A-301, it appears that officers still must serve the original or a certified copy of the warrant on the defendant after he or she is arrested. The authority of officers to make arrests in public places is also not affected. Under G.S. 15A-401(a)(2), an officer who knows that an arrest warrant has been issued may arrest a person in a public place whether or not the officer has the warrant (original or copy) in his or her possession. The warrant must thereafter be properly served on the person arrested.

Warrantless Arrests. G.S. 15A-401(b) has provided that in certain circumstances an officer may arrest a person without a warrant for a misdemeanor committed out of the officer's presence. S.L. 1999-23 (S 197) expands this authority to cover additional misdemeanors involving acts of domestic violence. These changes are discussed under Domestic Violence, below.

Pretrial Release. G.S. 20-4.19 has provided that a nonresident of North Carolina who holds a license from a reciprocating state and who is cited for a violation of North Carolina's motor vehicle laws must be released on his or her personal recognizance, defined in G.S. 20-4.18 as an agreement to comply with the terms of the citation; he or she may not be required to post a bond to secure his or her appearance at trial. If, however, the offense is one that would result in suspension or revocation of a person's license under North Carolina law, the person could not be released on his or her personal recognizance (although he or she could be released on an unsecured bond).

Effective August 10, 1999, S.L. 1999-452 (H 280), sec. 6–7, amends G.S. 20-4.18 to delete the requirement that a nonresident actually sign a personal recognizance agreement to obtain that form of release and amends G.S. 20-4.19(b) to allow release on personal recognizance in cases that would result in a license suspension or revocation. (The setting of pretrial release conditions for nonresidents charged with a motor vehicle infraction is also subject to G.S. 15A-1113, which provides that a nonresident may not be required to execute any bond, secured or unsecured, if the person is licensed to drive by a state that subscribes to the nonresident violator compact and the infraction is subject to the compact. A nonresident who is not covered by the compact and who is charged with an infraction may be required to post an unsecured bond but not a secured bond if he or she is unable to do so.)

Community College Law Enforcement Agencies. Effective May 20, 1999, S.L. 1999-68 (H 477) adds new G.S. 115D-21.1 authorizing community colleges to establish campus law-enforcement agencies and employ campus police officers. These officers have the same powers as campus officers at constituent institutions of the University of North Carolina (authorized under G.S. 116-40.5). The territorial jurisdiction of such officers extends to property owned by or leased to the college employing them and to public roads running through or adjoining the property. A community college also is authorized to enter into joint agreements with municipalities and counties to extend the law enforcement authority of campus officers into those areas.

McGruff House Volunteers. Effective June 25, 1999, S.L. 1999-214 (S 1068) amends G.S. 114-19.9 to allow local law enforcement agencies to obtain criminal record checks of volunteers for the McGruff House Program in their communities and of persons 18 years of age or older who live in a volunteer's household. The criminal record check may be conducted only with the consent of the person whose record is to be checked. Refusal to give consent is considered a withdrawal of the application to be a volunteer, and information obtained by the local law enforcement agency must be kept confidential.

Impaired Driving

S.L. 1999-406 (H 1135), an act to implement the recommendations of the Governor's task force on impaired driving, modifies several parts of the impaired driving statutes. Most importantly, it establishes new, lower alcohol limits for persons convicted of impaired driving, enforceable by DMV rather than by the criminal courts, and in some cases mandates the use of ignition interlock devices as a condition of restoring a person's driver's license.

Lower Alcohol Levels

S.L. 1999-406 (H 1135) amends G.S. 20-19 to establish lower alcohol limits for persons who have been convicted of various impaired driving offenses.

These amendments apply to offenses committed on or after July 1, 2000 (the impact of this effective date is discussed further below).

Covered Offenses. The new limits apply when a person's license is restored after revocation for one of the following offenses:

- regular impaired driving;
- commercial impaired driving;
- driving while less than 21 years old after consuming any alcohol;
- felony death by vehicle;
- involuntary manslaughter when the offense involves impaired driving; and
- comparable out-of-state or federal offenses resulting in a revocation in North Carolina.

New Limits. The first time a driver's license is restored following a conviction of regular impaired driving (or a comparable out-of-state or federal offense), the person may not operate a vehicle with an alcohol concentration of 0.04 or more. The condition remains in effect for three years. After a second or subsequent restoration, the person may not drive with an alcohol concentration of more than 0.00 for three years. If a license is restored after a permanent revocation, the 0.00 level applies for seven years.

If a person's license is restored following conviction of any of the other offenses listed above, the person may not operate a vehicle with an alcohol concentration greater than 0.00. The condition applies for three years unless the revocation was permanent or for the underage zero tolerance offense. For permanent revocations the period is seven years and for drivers under 21 it is until the driver reaches 21.

Consequences of Violation. A person who violates one of the new lower levels after his or her license has been restored does not commit a crime. Rather, if the person exceeds the limit, DMV must revoke any conditional restoration and impose an additional one-year revocation. (If, however, the person also is subject to the ignition interlock condition of restoration, which as discussed below prohibits driving with an alcohol level of 0.04 or more, the person may be charged with driving while license revoked). Upon restoration of the person's license, the person may not drive with an alcohol concentration of more than 0.00 for three years.

Procedure for Establishing Violation. A person subject to these new lower levels must agree as a condition of restoration of his or her license to take a chemical analysis pursuant to G.S. 20-16.2 if requested to do so by an officer who has probable cause to believe the applicable level has been exceeded. The person also must agree to accompany the officer to the test site. If the person is properly requested to submit to a chemical analysis, is notified of his or rights, and willfully refuses to submit to the analysis, his or her license is subject to a one-year revocation pursuant to amended G.S. 20-16.2. (The 30-day revocation under G.S. 20-16.5 would not apply, however, if the person is alleged only to have violated the new alcohol levels; in those circumstances, the person would not be charged with an implied-consent offense, a prerequisite to the 30-day revocation.)

If the chemical analysis reveals a violation, the officer must submit an affidavit to that effect to DMV (pursuant to amended G.S. 20-16.2), which then imposes the additional revocation discussed above. G.S. 20-19(c3) states that a reading from an interlock ignition device may not be used as the basis for revoking a person's license for a violation of one of the new alcohol levels.

Under G.S. 20-19(c5), a person has a right to a hearing before DMV to review a decision to revoke for a violation of the alcohol limit. Under G.S. 20-19(c6), the person may seek discretionary review in superior court of an adverse decision by DMV. These sections govern hearings when the person is alleged to have violated the new alcohol levels; G.S. 20-16.2 governs hearing procedures following a willful refusal to submit to a chemical analysis.

Effective Date. Since the new alcohol levels apply only to offenses committed on or after July 1, 2000, they may not become an issue for some time. Before a person's license may be revoked for violating the new levels, he or she will have to commit an impaired driving or other triggering offense on or after July 1, 2000, have his or her license revoked, have the new alcohol levels imposed as a condition of license restoration, and then violate that restriction.

Ignition Interlock Devices

Ignition interlock devices are instruments attached to motor vehicles that require the driver to submit to a breath test before and during driving of the vehicle. A failure to pass the breath test will prevent the vehicle from starting or continuing to be driven. Individuals must use a prearranged code to activate the device, which records each reading along with the time of the reading. These devices have been authorized, although not required, as a condition of a limited driving privilege. *See* G.S. 20-179.3(g3); *see also* G.S. 20-19(d), (e) (DMV may impose reasonable conditions or restrictions in restoring license before end of revocation period). The defendant must bear the cost of

installation and maintenance of the devices, which are provided by private vendors licensed by DMV.

Effective for offenses committed on or after July 1, 2000 (note the effective date, discussed further below), S.L. 1999-406 (H 1135) *mandates* ignition interlock devices under certain circumstances when a revoked license is restored.

When Required. Under new G.S. 20-17.7, an interlock device is required upon restoration of a person's license if

- the person's license was revoked for an impaired driving conviction under G.S. 20-138.1, and
- the person had an alcohol concentration of 0.16 or within the preceding seven years had another conviction of an offense involving impaired driving.

Nature and Duration of Restrictions Imposed. In cases meeting these criteria, the person is subject to the following restrictions upon restoration of his or her license. The person

- may not operate a vehicle unless it is equipped with an interlock device,
- must personally activate the device before starting the vehicle, and
- may not drive with an alcohol concentration of 0.04 or more.

These conditions last one year if the original revocation was one year, three years if the revocation was four years, and seven years if the revocation was permanent. (Note, however, that although the interlock conditions may last less than three years, the lower alcohol level of 0.04, discussed above, applies for three years after a conviction for impaired driving.)

Consequences of Violation. A violation of the interlock conditions constitutes the crime of driving while license revoked under G.S. 20-28(a). If a law enforcement officer has reasonable grounds to believe that the person has driven with any alcohol in his or her system, the offense is considered an alcohol-related offense and is subject to the implied-consent provisions of G.S. 20-16.2 and -16.5. If a judicial official finds probable cause for a charge of driving while license revoked based on a violation of the interlock conditions, the person's license is suspended pending resolution of the case and the judicial official must require the person to surrender his or her license. G.S. 20-17.7(f) states that an alcohol concentration report from an interlock device is *not* admissible—either in a prosecution for driving while license revoked or in a revocation proceeding (discussed below)—if the person did not operate the vehicle until the device indicated an alcohol concentration of less than 0.04.

If convicted, the person has his or her license revoked for the period required by G.S. 20-28(a) (one year for first offense, two years for second offense, and permanently for third or subsequent offense). New G.S. 20-17.7(g) states further that a person who violates an ignition interlock condition, but who is not charged with or convicted of driving while license revoked, may still be subject to a one-year revocation. It is unclear, however, in what circumstances this provision would apply. In such cases, the person has a right to a hearing before DMV and, if the revocation is sustained, a right to appeal to superior court pursuant to G.S. 20-25.

Limited Driving Privileges. In a related change, a limited driving privilege for a person convicted of impaired driving must provide that the person may only drive a vehicle equipped with an ignition interlock device if the person had an alcohol concentration of 0.16 or more. This requirement, also effective for offenses committed on or after July 1, 2000, appears in new G.S. 20-179.3(g5). Pursuant to G.S. 20-179.3(g4), the interlock conditions do not apply to vehicles owned by the person's employer and operated by the person solely for work-related purposes if the owner files a written statement to that effect with the court.

Effective Date. The mandatory interlock conditions apply only to offenses committed on or after July 1, 2000. Consequently, the interlock conditions may not become an issue for some time. Before a person may be prosecuted for violating the condition, he or she will have to commit an impaired driving offense on or after July 1, 2000, have his or her license revoked, have the interlock conditions imposed upon restoration of the license or the granting of a limited privilege, and then violate those conditions.

Other Impaired Driving Changes

Vehicle Forfeiture. In 1997 the General Assembly enacted strict vehicle forfeiture laws for certain impaired driving cases, and in 1998 the General Assembly made numerous revisions to the new forfeiture procedures. Effective for offenses committed on or after December 1, 1999, S.L. 1999-406 (H 1135), sec. 11–12 and 17, makes a few more amendments. First, the act expands the types of license revocations that may trigger forfeiture. Generally, a vehicle is subject to forfeiture if the driver, at the time of

committing certain impaired driving offenses, has a revoked license for one of a number of reasons related to impaired driving. G.S. 20-28.2 is amended to include among the triggering revocations a revocation imposed by another state for an offense that would result in a triggering revocation if committed in this state.

Second, the act amends the definition of innocent owner. One of the grounds of "innocence" has been that although the owner knew that the driver had a revoked license, the driving occurred without the owner's permission. G.S. 20-28.2(a1)(2) is amended by making this ground available only if the owner also files a report of unauthorized use and agrees to prosecute.

Third, the act clarifies how an innocent owner may demonstrate financial responsibility, a requirement for obtaining the return of a seized vehicle. The law has required that an innocent owner demonstrate financial responsibility to obtain possession of a vehicle that has been seized. G.S. 20-28.2(e) is amended to make it clear that when a vehicle is registered in another state, an innocent owner may satisfy this requirement by showing financial responsibility in a manner consistent with the laws of that other state.

Admissibility of Alcosensor Test. Generally, alcohol screening tests such as alcosensor tests are inadmissible in criminal prosecutions because the results are considered too unreliable. In some circumstances, however, the General Assembly has allowed the use of such results—for example, in prosecutions of underage persons who drive while they have any alcohol in their systems. Effective for offenses committed on or after December 1, 1999, S.L. 1999-406 (H 1135), sec. 6, allows the use of these tests in prosecutions for driving for violations of the zero tolerance provision of a limited driving privilege. Amended G.S. 20-179.3(j) provides that an approved alcohol screening test or refusal to submit to such a test is admissible to determine whether alcohol was present in the driver's system.

Other Zero Tolerance Changes. In 1998, the General Assembly added zero tolerance offenses for drivers of commercial vehicles, school busses, and child care vehicles. These statutes—G.S. 20-138.2A and -138.2B—prohibited a driver of such a vehicle from having an alcohol concentration of greater than 0.00 and less than 0.04, which could be shown only by an intoxilyzer or blood test. Effective for offenses committed on or after December 1, 1999, S.L. 1999-406 (H 1135), sec. 15–16, amends those statutes to prohibit a driver of such a vehicle from driving while consuming alcohol or while alcohol remains in the driver's system. The amended statutes allow use of an approved alcohol screening test, or refusal to submit to such a test, to establish that alcohol was present in the driver's system. They also provide that the odor of alcohol by itself is insufficient evidence to establish a violation unless the driver refused an offer of an alcohol screening test or chemical analysis.

Pretrial License Revocations. In 1998, the General Assembly made several changes to G.S. 20-16.5, which imposes a pretrial license revocation when a person is charged with certain alcohol-related offenses. One of the 1998 changes, governing when the thirty-day pretrial revocation begins to run, was reversed by S.L. 1999-406 (H 1135), sec. 13. Under the 1998 version of the statute, if the driver is present when the revocation order is issued, the thirty-day revocation begins on the date of issuance of the order. For offenses committed on or after December 1, 1999, the thirty-day revocation begins to run when the defendant surrenders his or her license (or demonstrates that he or she is not licensed), which could occur after issuance of the revocation order.

Possession of Alcoholic Beverage While Operating Commercial Vehicle. Effective for violations occurring on or after December 1, 1999, S.L. 1999-330 (H 303) adds a new statute, G.S. 20-138.2C, making it unlawful for a person to drive a commercial vehicle while having an alcoholic beverage in the passenger area of the vehicle. Unlike other prohibitions on transporting alcohol, this law applies to open *or* closed containers of alcohol. The law does not apply, however, to drivers of excursion passenger vehicles, for-hire passenger vehicles, common carriers of passengers, or motor homes if the alcoholic beverage is in the possession of a passenger or in the passenger area of the vehicle. A violation is an infraction, punishable by a penalty of up to $100 (under G.S. 20-176).

Other Motor Vehicle Changes

Criminal Offenses

Fraudulent Use of License or Identification. G.S. 20-30 lists several unlawful activities involving driver's licenses. Effective for offenses committed on or after December 1, 1999, S.L. 1999-299 (H 1022) adds to this list by making it unlawful to "present, display, or use a driver's license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony." While most driver's license violations are Class 2 misdemeanors (pursuant to G.S. 20-35), this violation

is a Class I felony. The act also amends G.S. 20-37.8 to make it a Class I felony to present, display, or use a special identification card containing a false or fictitious name in the commission or attempted commission of a felony. (This kind of card is usually obtained by a person who does not have a driver's license.)

Blue Lights. Effective for offenses committed on or after December 1, 1999, S.L. 1999-249 (S 172) clarifies the prohibition in G.S. 20-130.1 on improper use of blue lights. As rewritten, the statute states that it is unlawful for any person to "possess a blue light or to install, activate, or operate a blue light in or on any vehicle except for a publicly owned vehicle used for law enforcement purposes." Some exceptions are provided for persons engaged in the installation and sale of blue lights. A violation of this law remains a Class 1 misdemeanor. (More severe sanctions apply if a person impersonates a law enforcement officer by use of a blue light. *See* G.S. 14-277.)

Infractions

Speeding in Highway Work Zone. G.S. 20-141(j2) has made it an infraction, punishable by a penalty from $100 to $250, for a person to exceed the speed limit in a highway work zone. Effective for violations occurring on or after December 1, 1999, S.L. 1999-330 (H 303), sec. 3, amends the statute to require a $250 penalty for this violation.

The amended statute also provides that the officer who issues a citation for a work zone violation must indicate the vehicle speed and work zone speed limit. If the motorist is convicted, the clerk of court must forward to DMV the findings concerning speed and speed limit. Based on this information, DMV apparently may seek to impose speed-related sanctions—for example, driver's license points under G.S. 20-16(c) for speeding in excess of 55 m.p.h. or a 30-day license suspension under G.S. 20-16.1(a) for driving over 55 m.p.h. and more than 15 m.p.h. over the speed limit—even though a work zone violation is not designated as a conviction for which such consequences may be imposed.

Seat Belt Violations. S.L. 1999-183 (S 65) amends G.S. 20-135.2A (seat belts) and G.S. 20-137.1 (child restraint systems) to require usage of seat belts as described below.

As under prior law, every front seat occupant of a passenger motor vehicle who is age 16 or older must wear a seat belt. A driver or passenger who fails to do so commits an infraction, punishable by a $25 penalty, but may not be assessed court costs.

Passengers under age 16 (previously, under 12) must be secured in an appropriate child restraint system or seat belt whether seated in the front or rear seat (some vehicles are excepted). A driver who fails to secure one or more passengers under age 16 commits an infraction, punishable by a penalty not to exceed $25 regardless of how many persons were not properly secured.

A child under age five and less than 40 pounds must be in an appropriate child restraint system. If the vehicle is equipped with an active passenger side air bag and the vehicle has a rear seat, the child must be in that seat. The same penalties apply to this violation as to failing to secure a passenger under age 16.

The act is effective October 1, 1999, except that the provisions dealing with children under age five do not apply to children who turn four years old before that date.

Parking in Handicapped Space. Effective for acts committed on or after January 1, 2000, S.L. 1999-265 (H 143) amends G.S. 20-37.6(f) to provide that the penalty for parking in a handicapped parking space is from $100 to $250 rather than from $50 to $100.

Funeral Processions. North Carolina law has traditionally left the regulation of funeral processions to local governments. *See* G.S. 20-169 ("local authorities . . . may regulate the use of highways by processions or assemblages"). Effective for violations occurring on or after December 1, 1999, S.L. 1999-441 (H 247) reverses this longstanding policy and imposes in new G.S. 20-157.1 detailed rules concerning funeral processions. For example, vehicles proceeding in the same direction as a funeral procession may not pass the procession unless the street has two or more lanes in the same direction as the procession. G.S. 20-157.1 also provides that local governments may enact ordinances that prevail over the provisions of the statute. A violation is an infraction (pursuant to G.S. 20-176) but is not considered a moving violation for insurance purposes.

Registration Renewal Stickers. G.S. 20-63(g) makes it a Class 2 misdemeanor for the operator of a motor vehicle to alter, disguise, or conceal a registration plate or the figures thereon. Effective October 1, 1999, S.L. 1999-452 (H 280), sec. 13, amends that statute to provide that an operator who otherwise intentionally covers any number or registration renewal sticker, making the number or sticker illegible, commits an infraction, punishable under G.S. 14-3.

Commercial Vehicles

Somewhat stricter standards apply to operators of commercial motor vehicles than to other drivers. The changes affecting commercial drivers under the impaired driving laws are discussed above. Effective for violations occurring on or after December 1, 1999, S.L. 1999-330 (H 303), sec. 7, creates a separate and higher schedule of driver's license points for violations involving operation of a commercial vehicle. The following list, from amended G.S. 20-16(c), shows the points for violations involving commercial vehicles compared to the points for other vehicles:

- passing stopped school bus, 8 (5 for non-commercial vehicles)
- rail-highway crossing violation, 6 (apparently 2)
- reckless driving, 5 (4)
- hit and run, property damage, 5 (4)
- following too closely, 5 (4)
- driving on wrong side of road, 5 (4)
- illegal passing, 5 (4)
- running stop sign, 4 (3)
- speeding in excess of 55 m.p.h., 4 (3)
- failing to yield right-of-way, 4 (3)
- running red light, 4 (3)
- no driver's license, 4 (3)
- failing to stop for siren, 4 (3)
- driving through safety zone, 4 (3)
- no liability insurance, 4 (3)
- failing to report accident, 4 (3)
- speeding in school zone, 4 (3)
- possessing alcohol in vehicle, 4 (2)
- all other moving violations, 3 (2)
- littering, 1 (1)

Also effective for violations occurring on or after December 1, 1999, section 8 of the act provides in new G.S. 20-16A that a commercial driver who commits an offense for which points may be assessed under the new schedule may be assessed double the amount of any fine or penalty authorized by statute.

Domestic Violence

S.L. 1999-23 (S 197) implements recommendations of the Governor's task force on domestic violence. The changes primarily concern the authority of law enforcement officers to enforce out-of-state protective orders and to make warrantless arrests for misdemeanors involving domestic violence and violations of domestic violence protective orders.

Out-of-State Domestic Violence Protective Orders

Registration. G.S. 50B-4(d) has required North Carolina to give "full faith and credit" to protective orders entered by the courts of another state or an Indian tribe. In other words, the order must be enforced by North Carolina law enforcement agencies and courts as if the order had been entered in this state. The statute has not specified a procedure, however, for granting full faith and credit to such orders. The general law on enforcing out-of-state judgments, in G.S. 1C-1701 through -1708, requires that they be registered in North Carolina—that is, filed with the clerk of superior court—and that notice of filing be given to the defendant. It also prohibits enforcement of the judgment for thirty days after notice is given. There has been some confusion over whether an out-of-state domestic violence protective order could be enforced without compliance with these registration procedures.

S.L. 1999-23 amends G.S. 50B-4(d) to provide that an out-of-state protective order must be enforced by North Carolina law enforcement agencies and courts "whether or not the order has been registered." The statute provides further that in determining the validity of an out-of-state protective order, officers may rely on a copy of the order and on the statement of a person protected by the order that it remains in effect. Of course, officers may consider any other available information in determining whether an out-of-state order is valid. New G.S. 50B-4(e) also provides that upon application or motion by a party to the case, the court must determine whether an out-of-state order remains in full force and effect.

A person protected by an out-of-state protective order may still register it in North Carolina. G.S. 50B-4(d) allows registration by filing of a copy of the order with the clerk of court along with an affidavit stating that to the best of the person's knowledge the order is presently in effect. Notice of registration is not given to the defendant. The advantage of registering an out-of-state order is that the clerk must provide a copy of the order to the sheriff for entry into the National Criminal Information Center (NCIC) registry.[5]

5. Despite the breadth of the registration changes, a child custody provision of an out-of-state domestic violence protective order may not be enforceable until the order is registered pursuant to the procedures of the Uniform Child-Custody Jurisdiction and Enforcement Act, G.S. 50A-101 through -317. The uniform act mandates registration of out-of-state child custody determinations and may override the more general provisions in G.S. Ch. 50B.

The above amendments become effective February 1, 2000, but officers may be able to enforce out-of-state protective orders, without awaiting registration, as early as December 1, 1999. In addition to the above amendments, the act amends G.S. 1C-1702 to provide that a domestic violence protective order is not subject to the registration procedures governing out-of-state judgments. This change is effective December 1, 1999, and so it appears to authorize enforcement of out-of-state protective orders, whether or not registered, beginning on that date.

Criminal Violation of Out-of-State Order. Effective December 1, 1999, S.L. 1999-23 makes it a crime to violate an out-of-state protective order. Under amended G.S. 50B-4.1(a), a person who knowingly violates in this state a valid out-of-state protective order is guilty of a Class A1 misdemeanor. Previously, the statute applied only to orders entered by the North Carolina courts, so out-of-state orders could be enforced only through contempt proceedings (discussed further below).

Amended G.S. 50B-4.1 also provides that if an officer arrests a person without a warrant for a violation of an out-of-state order, and the person arrested contests the order, the person must promptly be provided with a copy of the information pertaining to the order that appears on the NCIC registry.

Arrests for Domestic Violence Offenses

Civil Contempt and Mandatory Arrests. G.S. 50B-4 has provided two ways to initiate civil contempt proceedings for violations of domestic violence protective orders. First, under G.S. 50B-4(a), a person protected by the order may file a motion with the clerk of superior court for the defendant to be held in contempt. If the clerk finds probable cause that a violation has occurred, the clerk sets a date for a contempt hearing before a district court judge and issues to the defendant an order to appear at the hearing and show cause why he or she should not be held in contempt. This procedure is the customary procedure for holding a defendant in contempt for violation of a civil order.

G.S. 50B-4(b) has contained a second, unusual method of initiating civil contempt proceedings. That section requires a law enforcement officer to arrest a defendant without a warrant if the officer has probable cause to believe that the defendant has violated certain provisions of the order—namely, those excluding the defendant from the residence of a person protected by the order or directing the defendant not to threaten, abuse, follow, harass, or interfere with that person. Upon arrest, the officer must take the defendant before a magistrate, who sets a date for a contempt hearing before a district court judge and issues a show cause order to the defendant to appear at the hearing. Pretrial release conditions must be set, but only by a judge within the first 48 hours after arrest.

In 1997 the General Assembly added G.S. 50B-4.1, which made it a crime to violate a domestic violence protective order. Thus, a third mechanism became available for enforcing a protective order—namely, charging the defendant with the crime of violating the order.

S.L. 1999-23 repeals the second mechanism for enforcing a protective order, leaving the following two procedures only:

1. A person protected by the order may use the customary contempt procedure of filing a motion for contempt with the clerk of superior court, who then sends notice to the defendant to appear at a contempt hearing; or
2. The defendant may be charged with the crime of violating the protective order.

As under prior law, *officers still must make a warrantless arrest* of a defendant for violating certain provisions of a protective order (those discussed above prohibiting the defendant from the residence and from interfering with a person protected by the order). But, the mandatory arrest provisions, which formerly applied to arrests for purposes of civil contempt proceedings, have been transferred to G.S. 50B-4.1. Therefore, they come into play when officers charge a person with the crime of violating a protective order.

The mandatory arrest provisions in G.S. 50B-4.1 become effective December 1, 1999. The procedure requiring officers to arrest a person for purposes of civil contempt proceedings is repealed effective February 1, 2000, but as a practical matter that procedure is unnecessary beginning December 1, 1999.

Warrantless Arrests. G.S. 15A-401(b) has allowed officers in some instances to arrest a person without a warrant for misdemeanors committed out of their presence. (Officers also have the authority to make warrantless arrests for misdemeanors committed in their presence and for felonies committed in or out of their presence.) Officers have had the authority to make a warrantless arrest for, among other misdemeanors, violations of G.S. 14-33(a) (assault), G.S. 14-33(c)(1) (assault inflicting serious injury or with a deadly weapon), and G.S. 14-33(c)(2) (assault on a female) if the defendant and victim are or were married or are or were living together as if married.

Effective December 1, 1999, S.L. 1999-23 expands this authority in three respects. Under amended G.S. 15A-401(b), officers may make a warrantless arrest for:

- any of the above assault offenses if the defendant and victim have a "personal relationship" as defined in G.S. 50B-1, which includes six different types of relationships, not just marriage or marriage-like relationships;
- violations of G.S. 14-34 (assault by pointing a gun) if the defendant and victim have a personal relationship as defined in G.S. 50B-1; and
- the criminal offense of violating a protective order under G.S. 50B-4.1, which may involve a violation of any provision of the order, not just those violations for which arrest is mandatory, discussed above.

New Domestic Violence Offenses

Last, S.L. 1999-23 creates a new offense involving false representations regarding domestic violence protective orders. Effective for offenses committed on or after December 1, 1999, new G.S. 50B-4.2 provides that a person is guilty of a Class 2 misdemeanor if he or she

1. knowingly makes a false statement
2. to a law enforcement agency or officer
3. that a domestic violence protective order entered by the courts of this state or another state or Indian tribe
4. remains in effect.

Domestic Violence Commission

Effective July 1, 1999, section 24.2 of S.L. 1999-237 (H 168) establishes a permanent Domestic Violence Commission to assess statewide needs related to domestic violence, assure that necessary services, policies, and programs are provided, and coordinate and collaborate with the North Carolina Council for Women in strengthening domestic violence programs. The Commission consists of 39 members appointed by the Governor, Senate, and House. It also includes the heads of various state departments that may have some role in addressing domestic violence.

Capital Cases

Only one act addresses capital cases, and it has a limited impact. First, effective for executions scheduled on or after August 4, 1999, S.L. 1999-358 (S 365) amends G.S. 15-194 to provide that the Secretary of Correction, rather than the warden at Central Prison in Raleigh, is responsible for setting execution dates and notifying interested parties of such dates. The act also provides that the execution date must be from thirty to sixty days, rather than from thirty to forty-five days, after the Secretary receives notice to schedule the date.

Second, the act states that it shall be the policy of the Department of Correction to prohibit death row inmates from contacting surviving family members of a victim without the written consent of those family members. The act states that the term "contact" includes arranging for a third party to forward communications from the inmate to the family members. This part of the act, which does not revise or enact any statute, is also effective August 4, 1999.

Juveniles

Delinquency Proceedings

Appeal from Transfer Order. S.L. 1999-309 (S 310) amends G.S. 7B-2603 to provide that notice of appeal from an order transferring a juvenile's case to superior court for trial as an adult must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the transfer hearing). Determining the time of entry of a transfer order for purposes of appeal is governed by Rule 58 of the North Carolina Rules of Civil Procedure. This change applies to actions filed on or after October 1, 1999.

As under the previous version of G.S. 7B-2603, which took effect July 1, 1999, an appeal of a transfer order is to the superior court and then, if the order is upheld and the juvenile is convicted, to the court of appeals. S.L. 1999-423 (H 1216), sec. 2, makes one further change to the statute, effective July 1, 1999. It deletes from G.S. 7B-2603(a) the statement that if a juvenile fails to appeal a transfer order to superior court, he or she may not raise the issue of transfer to the court of appeals until final disposition of the matter in superior court.

This provision implied that a juvenile could appeal to the court of appeals before final disposition in

superior court if he or she properly raised the issue in superior court, which was inconsistent with explicit language stating that the superior court's decision upholding transfer could not be appealed until final disposition. The provision also could have been interpreted as allowing a juvenile to appeal a transfer decision to the court of appeals after final disposition in superior court even if the juvenile failed to raise the issue in superior court. Now that the provision has been deleted, it appears under general principles of appellate review that a juvenile must timely appeal a district court transfer decision to superior court to preserve the issue for review by the court of appeals (after final disposition in superior court).

Nonsecure Custody. G.S. 7B-1905(a) provides that when the court places a juvenile alleged to be delinquent or undisciplined in nonsecure custody, it must place the juvenile with a relative if the relative is willing and able to provide proper care and supervision. As amended by section 14 of S.L. 1999-423 (H 1216) (effective July 1, 1999), the statute provides an exception to that requirement if the court finds that placement with the relative would be contrary to the juvenile's best interests.

Predisposition Reports. S.L. 1999-423 (H 1216), sec. 13, restores a provision from prior law relating to the timing of predisposition reports, which had not been included in the new Juvenile Code. Effective July 1, 1999, the act amends G.S. 7B-2413 to provide that when a juvenile is alleged to be delinquent or undisciplined, no predisposition report or risk and needs assessment may be done before an adjudication that the juvenile is within the juvenile jurisdiction of the court—that is, before the juvenile has been adjudicated delinquent or undisciplined—unless the juvenile or the juvenile's parent, guardian, custodian, or attorney files a written statement with the court counselor permitting such a report or assessment.

Community Service for Level 2 Dispositions. Effective for acts committed on or after July 1, 1999, S.L. 1999-444 (H 661) amends one of the Level 2 dispositions described in G.S. 7B-2506 for delinquent juveniles. Amended G.S. 7B-2506(23) authorizes the court to order the juvenile to perform up to 200 hours of supervised community service; previously, that section required at least 100 but not more than 200 hours of community service.

Registration of Juvenile Sex Offenders. The changes to these requirements are discussed below under Collateral Consequences.

Abuse, Neglect, and Dependency Proceedings

This part discusses changes concerning abuse, neglect, and dependency proceedings only to the extent they may have some bearing on criminal cases; it is not intended to be a complete review of the legislation in this area.

Records and Mental Health Evaluations of Alleged Abusers. S.L. 1999-318 (H 1159) amends G.S. 7B-302(d1) to require the county department of social services, whenever a juvenile is removed from the home because of physical abuse, to conduct a thorough review of the abuser's background. The review must include a check of the person's criminal history and of available mental health records. In obtaining access to mental health records, social services directors may be able to rely on existing wording in G.S. 7B-302(e), which authorizes directors to obtain information needed to perform "any duties" related to the investigation of abuse, neglect, or dependency reports or to the provision of or arrangement for protective services.

Amended G.S. 7B-302(d1) provides further that if the director's review reveals that the alleged abuser has a history of violent behavior against people, the director must petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. Under amended G.S. 7B-503, the court must rule on the petition before returning the child to a home where the alleged abuser is or has been present. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation and may order the alleged abuser to pay the cost of the evaluation. Amended G.S. 7B-506 provides that in determining whether the juvenile's continued nonsecure custody is warranted, the court must consider the opinion of the mental health professional who performed the evaluation.

The results of the mental health evaluation must be included in the evaluation the social services director prepares pursuant to G.S. 7B-304 for presentation to the court following adjudication. In addition, at disposition under G.S. 7B-903 or G.S. 7B-1003 (disposition pending appeal), if the court finds that the juvenile suffered physical abuse and that the responsible individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed the

evaluation before returning the juvenile to that person's custody. The act applies to petitions filed on or after October 1, 1999.

Access to Records by Guardian Ad Litem. G.S. 7B-601 provides for the court appointment of guardians ad litem to represent children alleged to be abused, neglected, or dependent. Effective August 10, 1999, S.L. 1999-432 (S 25) amends G.S. 7B-601 to authorize the guardian ad litem to obtain any information or reports (except those protected by the attorney-client privilege or federal law), whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Previously, the guardian ad litem had this authority only if the court specifically granted it in the order appointing the guardian ad litem.

Under the amended statute, the guardian ad litem's responsibilities include (1) conducting follow-up investigations to ensure that court orders are being properly executed and (2) reporting to the court when the needs of the juvenile are not being met. The guardian ad litem's appointment continues until a permanent plan has been achieved for the juvenile and approved by the court.

Court-Ordered Treatment of Parents and Others. G.S. 7B-904 describes the court's authority at a dispositional or subsequent hearing in an abuse, neglect, or dependency proceeding to require parents to do specified things, such as undergo psychiatric, psychological, or other treatment or counseling to remedy behaviors that contributed to the juvenile's adjudication or removal from that person's custody. Effective for petitions filed on or after October 1, 1999, S.L. 1999-318 (H 1159) rewrites the section to give the court most of the same authority in relation to the juvenile's guardian, custodian, or stepparent, an adult member of the juvenile's household, or an adult relative entrusted with the juvenile's care.

Sentencing

Sentencing Services (Community Penalties)

Background. The Community Penalties Program was established in 1983, primarily to stem the growth of the state's prison population. The statewide program has involved a number of local programs, mostly private nonprofit organizations that operate under contracts with the Administrative Office of the Courts (AOC). Currently, the program serves all counties.

The function of local community penalties programs has been to conduct investigations before conviction to determine a defendant's suitability for sanctions other than (and sometimes in conjunction with) imprisonment. The programs select defendants for this service based on their likelihood of receiving substantial prison time without it. The local programs explore options such as restitution to the crime victim, community service, and various kinds of treatment and supervision for the defendant. They then prepare a report of their investigation, with recommendations that the sentencing judge may accept or reject. In most instances, the defendant has also been free to present or not present the report to the court.

S.L. 1999-306 (H 331) makes several changes to the Community Penalties Program (described in G.S. 7A-770 through -777), including changing the name to the Sentencing Services Program. The same local programs will continue to prepare plans, which will be known as sentencing services plans, and to arrange for services recommended by the plans, but subject to the procedures described below. The purpose statement, in G.S. 7A-770, is also revised to emphasize the role of sentencing services in meeting the needs of sentencing judges. Amended G.S. 7A-770 provides that the statewide program includes local programs "that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services." Except as otherwise noted, the act applies to plans requested on or after January 1, 2000.

Eligibility for Plan. A defendant must meet the criteria in revised G.S. 7A-773 to be eligible for a program's services. Most importantly, the defendant must be charged with or offered a plea for a felony offense for which the class of offense and prior record level authorizes, but does not require, the court to impose an active punishment. This group does not differ significantly from those people previously targeted by community penalties programs.

Preparation of Plan Before Determination of Guilt. New G.S. 7A-773.1 sets forth the new rules on requesting plans, which represent a departure from previous practice. Before a determination of guilt (either a guilty verdict or acceptance of a guilty plea), the defendant, prosecutor, or presiding judge may request a sentencing plan in cases meeting the criteria in G.S. 7A-773—generally, cases in which the person is charged with or has been offered a plea for a felony offense. A judge also may request a plan for a

defendant who is charged with a Class A1 or Class 1 misdemeanor and who is in prior conviction level III (five or more prior convictions).

The defendant may decline to participate in the preparation of a sentencing plan within a reasonable time after a request for a plan. The time allowed for the defendant to exercise this option is determined by each local program. (Under amended G.S. 7A-774, each local program must prepare a plan for its own operation, which should address this and other issues left open by the legislation. The local plan must be updated annually and submitted to the senior resident judge for his or her advice and approval; however, under amended G.S. 7A-772, the director of the AOC may award grants to a local program even without judicial endorsement of the program's plan of operations.)

If the defendant declines to participate in the preparation of a sentencing plan, no plan may be prepared or presented to the court prior to a determination of guilt. The defendant's decision not to participate must be in writing and filed with the court.

Preparation of Plan After Determination of Guilt. After a determination of guilt but before sentencing, the presiding judge may request a sentencing plan in cases meeting the criteria in G.S. 7A-773 or in those misdemeanor cases described above. The statutes do not authorize the defendant or prosecutor to request a plan at this stage.

Further, the statutes do not contain any opt-out provision. Thus, after a determination of guilt, the sentencing program may prepare a sentencing plan at a judge's request whether or not the defendant wishes to participate. Under the Fifth Amendment privilege against self-incrimination, however, a defendant still would appear to have the right to decline to provide information that could adversely affect his or her sentence or create the possibility of further prosecution. *See Mitchell v. United States*, 526 U.S. 314, 119 S. Ct. 1307, 143 L. Ed. 2d 424 (1999) (defendant's guilty plea does not waive Fifth Amendment privilege against self-incrimination at sentencing).

Presentation of Plan. Perhaps the most important change in the program, in new G.S. 7A-773.1(b), is that once a sentencing plan has been prepared, it must be presented to the court, the prosecutor, and the defendant. The statute qualifies this mandate by providing that presentation shall be "in an appropriate manner." The qualifying language suggests that the timing of presentation depends on the plan of operation adopted by each local program (discussed above). New G.S. 7A-773.1 also states that "no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt."

Contents of Plan. New G.S. 7A-773.1(c) allows the sentencing plan to include recommendations for use of any available treatment or correctional resources, unless the sentencing judge instructs otherwise. The plan also may report that no intermediate punishment is appropriate. Such a statement may mean only that appropriate resources, such as a suitable treatment program, are not currently available for the defendant. (Under G.S. 15A-1340.11(6), an intermediate punishment is defined as probation with at least one of the listed conditions—for example, assignment to a residential program.)

Miscellaneous. Under amended G.S. 15A-1340.14(f), the prosecution must provide, upon request of the sentencing services program, any criminal record information it has on a person for whom the program has been requested to provide a sentencing services plan.

To constitute an intermediate punishment, a sentence imposed pursuant to a sentencing services plan must, like any other intermediate punishment, include probation with one of the conditions listed in G.S. 15A-1340.11(6). The act deletes from that section the provision automatically making any sentence imposed pursuant to such a plan an intermediate punishment. This change applies to offenses committed on or after January 1, 2000.

Last, the act amends G.S. 7A-773 and -774 to delete the provisions requiring sentencing services programs to monitor the progress of defendants under plans accepted by the court. If the plan results in a probationary sentence, the responsibility for monitoring conditions of probation lies with the state's probation officers.

Other Sentencing Changes

Bullet-Proof Vests. Effective for offenses committed on or after December 1, 1999, S.L. 1999-263 (S 1011) requires an enhanced sentence if a person commits a felony while wearing or having in his or her immediate possession a bullet-proof vest. New G.S. 15A-1340.16C provides that in such circumstances the person is guilty of a felony one class higher than the underlying felony for which the person was convicted. The enhancement does not apply if evidence that the person possessed a bullet-proof vest is needed to prove

an element of the underlying felony.[6] Nor does it apply to law-enforcement officers.

The statute apparently leaves to the sentencing judge the determination of whether the bullet-proof vest enhancement applies. A recent U.S. Supreme Court decision raises serious questions, however, about treating such an enhancement as a sentencing matter rather than as an offense element. In *Jones v. United States*, 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999), the Court considered a federal statute authorizing a sentence of up to 15 years for carjacking, up to 25 years for carjacking resulting in serious injury, and up to life for carjacking resulting in death. The Court concluded that Congress intended to create three separate offenses—one for each punishment level. Thus, to obtain one of the greater punishments, the prosecution had to charge all of the elements of the offense, including serious injury or death, and had to prove those elements beyond a reasonable doubt.

The Court rejected the government's argument that the judge could impose the enhanced punishments upon finding serious injury or death by a preponderance of the evidence. The Court noted that such an interpretation of the statute raised serious constitutional concerns, stating:

> "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." 119 S. Ct. at 1224 n.6.

The Court ultimately did not address the constitutionality of the statute, however, basing its decision on its interpretation of Congressional intent.

If wearing a bullet-proof vest during commission of a felony is considered an offense element—and under the reasoning of *Jones* it may well be—then it too would have to be charged by indictment, submitted to a jury, and proven beyond a reasonable doubt. An enhanced sentence could not be imposed merely upon a finding by a judge at sentencing.

Use of Prior Misdemeanor Convictions in Felony Sentencing. Under structured sentencing, the judge's sentencing choices in a felony case depend on the seriousness of the offense of conviction and the defendant's prior criminal record. S.L. 1999-408 (H 328), sec. 3, clarifies the number of points assigned to prior misdemeanor convictions under G.S. 15A-1340.14(b). The amendment makes clear that

- one point is assigned to each prior conviction of a Class A1 or Class 1 nontraffic misdemeanor;
- one point is assigned to each prior conviction of impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)); and
- no points are assigned for any other misdemeanor traffic offense under G.S. Chapter 20.

The existing section said the same thing but not as clearly.

Drug Treatment Court. The Drug Treatment Court Act (G.S. 7A-790 through -801) was enacted in 1995 to encourage the establishment of drug treatment court programs, which seek to address the underlying drug abuse problems of defendants. Effective July 14, 1999, S.L. 1999-298 (S 852) amends two statutes in recognition that participants in such a program may be placed on probation either before or after conviction. New G.S. 15A-1341(a2) provides that a person may be placed on probation if the court finds that the defendant has entered into a deferred prosecution agreement for purposes of participating in a drug treatment court program. If the defendant successfully completes the program, the charges are dismissed. New G.S. 15A-1343(b1) allows participation in and completion of a drug treatment court program as a condition of probation after conviction of a crime.

Even without passage of this legislation, existing law (G.S. 15A-1341(a1) and 15A-1343(a)) appeared to allow use of drug treatment court as part of a deferred prosecution or as a condition of probation.

Collateral Consequences

This part discusses legislation concerning the collateral consequences of a criminal conviction—that is, those legal consequences that flow from a conviction but are

6. A similar exception applies to the sentencing enhancement in G.S. 15A-1340.16A for use of a firearm in the commission of a Class A through E felony. For a discussion of cases interpreting that exception, *see* Robert L. Farb, Appellate Cases: Structured Sentencing Act and Firearm Enhancement (last modified Sept. 1999) http://ncinfo.iog.unc.edu/programs/crimlaw/faculty.htm; JOHN RUBIN & BEN F. LOEB, JR., PUNISHMENTS FOR NORTH CAROLINA CRIMES AND MOTOR VEHICLE OFFENSES 11–12 (Institute of Government, 1999). The discussion that follows concerning *Jones v. United States* may also bear on the procedures for imposing the firearm enhancement.

not necessarily imposed by the court at the time of sentencing in the criminal case. (Some collateral consequences are discussed above under Explosives and Firearms and Offenses Concerning Schools.)

Sex Offender Registration. Effective for offenses committed on or after December 1, 1999, S.L. 1999-363 (S 331) modifies the sex offender registration laws. Under those laws, a person with a "reportable conviction" as defined in G.S. 14-208.6(4), which covers certain sex offenses and certain offenses against minors, must register with the sheriff of the county in which the person resides. The act amends that statute to include within the definition of "reportable conviction" solicitation and conspiracy to commit the listed offenses and aiding and abetting any of the listed offenses.[7] Previously, the definition covered only completed offenses and attempts. The amended statute also provides that a final conviction of aiding and abetting is to be treated as a reportable conviction only if the sentencing court finds that registration of the person would further the purposes of the registration laws.

The act makes similar changes to the juvenile sex offender registration laws. Those laws, which took effect October 1, 1999, provide that a court may require a juvenile to register if adjudicated delinquent of certain offenses (first- or second-degree rape, first- or second-degree sex offense, or attempted rape or sex offense). Effective for offenses committed on or after December 1, 1999, the act expands the list of offenses potentially requiring registration by including conspiracy, solicitation, and aiding and abetting as well as completed and attempted offenses.

Succession Rights of Slayer. S.L. 1999-296 (S 176) modifies the laws dealing with the succession rights of "slayers," which bar a person convicted of a willful and unlawful killing of another person from acquiring any property from that person's estate. The amendments to G.S. 31A-4 do not change this general rule but modify the succession rights of others, such as children of slayers. The act applies to the estates of persons who die on or after October 1, 1999.

Victims' Rights

7. The act also expands the definition of "offense against a minor." Previously, a conviction for an offense against a minor was subject to the registration laws only if the person committing the offense was not the minor's parent or legal custodian. Under the revised definition, the term continues to exclude acts committed by a parent but not acts committed by a legal custodian.

Compensation. The Crime Victims' Compensation Act, G.S. Chapter 15B, enacted in 1983, created a Crime Victim's Compensation Commission to compensate crime victims for economic losses caused by crime. S.L. 1999-269 (H 290) amends G.S. 15B-10 to allow the director of the Commission to decide the compensation award if the claim does not exceed $7,500 (formerly, this limit was $5,000). When the claim exceeds $7,500, the director recommends the award amount, and the Commission makes the final decision. This change applies to claims filed on or after July 1, 1999.

The act also amends G.S. 15B-11(b) to allow but not require a claim to be denied if (1) the victim was participating in a nontraffic misdemeanor at the time the victim's injury occurred or (2) the claimant or a victim through whom the claimant is making the claim engaged in contributory misconduct. The Commission may use its discretion in deciding whether to deny a claim on these grounds and in doing so may consider whether the misdemeanor or contributory misconduct proximately caused the injury.

Formerly, G.S. 15B-11(a)(6) allowed no discretion in this situation. The Commission was compelled to deny claims in which the victim was participating in a nontraffic misdemeanor of any type at the time of the injury. For example, because cohabitation (living with a person of the opposite sex as if married) is a misdemeanor under G.S. 14-184, the former provision could be interpreted as requiring denial of a claim in which a victim was assaulted or murdered by a person with whom he or she was cohabiting at the time. The legislation leaves unchanged the provision in G.S. 15B-11(a)(6) requiring denial of a claim if the victim was participating in a *felony* at the time of the injury.

The change regarding victims engaged in misdemeanors or other misconduct applies to claims filed or pending on or after July 1, 1999. For claims denied before that date on the basis that the victim was participating in a nontraffic misdemeanor at the time of the injury, the Commission must reconsider the claim upon written request by the claimant. This written request must be received within two years of the crime on which the claim is based.

Crime Victims' Rights Act. G.S. 15A-839 and -840 provide that the Crime Victims' Rights Act does not create any claim for damages against the state or any county or municipality; further, the failure to provide a right or service under the Crime Victims' Rights Act generally may not be used as a ground for relief in any criminal or civil case. Effective July 1, 1999, the date most provisions of the Crime Victims' Rights Act became effective, S.L. 1999-169 (H 975) amends these two statutes to clarify that they also bar

claims concerning the adequacy of services provided through the Statewide Automated Victim Assistance and Notification System (SAVAN), a computerized system for keeping victims informed of developments in their cases.

Court Administration

Futures Commission Recommendations

In 1997 the Commission on the Future of Courts and Justice in North Carolina (Futures Commission) released its report on reorganizing the North Carolina court system. The Commission, appointed by former Chief Justice James Exum in 1994, recommended sweeping changes to the structure and operation of the courts. This session, two bills based on the Commission's recommendations were passed, discussed below.

State Judicial Council. Effective January 1, 2000, S.L. 1999-390 (H 1222) establishes a 17-member State Judicial Council, which includes the Chief Justice, who serves as chair; the Chief Judge of the Court of Appeals; a district attorney, public defender, superior court judge, district court judge, clerk of court, and magistrate; and five attorneys and four nonattorneys.

The Council has several duties under new G.S. 7A-49.5. It must study the entire judicial system and report periodically to the Chief Justice on its findings; advise the Chief Justice on funding priorities and review the proposed budget for the courts each year; make recommendations on salaries and benefits for court officials; and consider any improvements in case management and uses of alternative dispute resolution. It also may recommend changes in district or division lines.

Additionally, the Council must recommend performance standards for all courts and all judicial officials as well as procedures for conducting periodic evaluation of the court system and individual judicial officials and employees. Evaluation of judges must include assessments by other judges, litigants, jurors, and attorneys and a self-assessment by the judge. Summaries of the evaluations must be made available to the public, but the data collected in producing the evaluations is not a public record.

Division reorganization. The other bill based on the recommendations of the Futures Commission is S.L. 1999-396 (S 1025). Some background information is necessary to put that bill in context. One of the central recommendations of the Futures Commission was that district and superior courts be merged into a new circuit court. In addition to consolidation of the subject matter jurisdiction of those courts, the circuit court proposal also would change the geographic area in which each judge serves. Under current law district judges serve in districts (of which there are thirty-nine), and superior court judges rotate, or ride circuit, throughout a division composed of several districts. There are currently four divisions for this purpose.

The Futures Commission recommended that circuits be sized somewhere in between districts (the largest of which has seven sparsely populated, rural counties) and divisions (the smallest of which has twenty counties and runs from South Carolina to Virginia). Under its plan a judge generally would hold court in all parts of the circuit over time. It did not recommend any specific boundary lines or circuits, but it did recommend that the state be divided into fourteen to sixteen circuits.

In 1998, the General Assembly enacted legislation (S.L. 1998-212, sec. 16.17A) requesting the Chief Justice to convene a task force of judicial officials to make two recommendations. First, it was to make recommendations to reorganize the superior court division into eight to twelve divisions. Second, it was to recommend the steps necessary to establish pilot programs in up to three of the new judicial divisions to approximate, as closely as possible, the "circuit court" proposed by the Futures Commission. The Chief Justice appointed the task force, and it made several recommendations to the General Assembly. Among other things, it recommended dividing the state into eight divisions for purposes of superior court rotation. It concluded, however, that it could not make recommendations on how to implement the circuit court proposal and declined to recommend any specific action on establishing pilots.

As recommended by the task force, S.L. 1999-396 divides the state into eight judicial divisions. In addition, the act authorizes pilot court management programs. All provisions are effective January 1, 2000.

The Chief Justice may choose up to two of the eight divisions, or portions of a division, to establish pilot programs for the organization and management of the trial courts in that area. In an area designated as a pilot, the Chief Justice is to name a judge to serve as the coordinating judge for the pilot program. That judge must then work within the existing administrative structure to achieve the goals of the pilot program. The legislation requires the coordinating judge, before taking any significant action, to obtain the consent of the senior resident and chief district court judges in the pilot area, the clerks of court, and the district attorneys. The legislation does not specify whether that consent must be unanimous or may be by

simple majority; nor does it specify whether consent from each group is required for all actions. With appropriate consent, the coordinating judge may establish the schedule for all the sessions of court in the pilot area, assign judges, develop calendaring procedures for both criminal and civil court, assign cases to individual judges, establish local rules, and allow judges to hear motions and pretrial proceedings in any county in the pilot area.

The coordinating judge may hire staff and must appoint an advisory council to assist him or her in the conduct of the pilot program. The legislature appropriated $150,000 to provide staff and other support to the pilot areas. The Chief Justice and Administrative Office of the Courts must report on the pilot programs by March 1, 2002.

Other Administrative Matters

Personnel. The 1999 Appropriations Act, S.L. 1999-237 (H 168), created the following new positions, effective January 1, 2000, unless otherwise noted:

- one new superior court judge in district 22 and four new special superior court judges (effective October 1, 1999);
- nine new district court judges, one each in districts 2, 5, 13, 15A, 18, 19A, 26, 27A, and 30;
- three new magistrates, one each in Camden, Cumberland, and Union counties;
- nine new assistant district attorneys, one each in districts 5, 12, 13, 15A, 19A, 20, and 26 and two in district 10; and
- four new assistant public defenders.

The General Assembly also authorized eleven new deputy clerks, eight court reporters, seven support staff for judges, three investigators and twenty-five victim witness/legal assistants in district attorney offices, and three assistant public defenders and one investigator for the Appellate Defender's capital case program, which provides representation in districts experiencing difficulty locating qualified private counsel to handle capital cases.

Local Funding. The 1999 Appropriations Act adds two new statutes (G.S. 153A-212.1 and 160A-289.1) and amends a third (G.S. 7A-64) to authorize cities and counties to provide supplemental funding for their local prosecutors' offices through the Administrative Office of the Courts. The district attorney must apply to the Administrative Office of the Courts and must show that the "overwhelming public interest" or an inability to keep up with the criminal dockets necessitates more resources.

Studies. The 1999 Appropriations Act combines two previous studies—one concerning management of indigent defense services generally and the other concerning cost-effectiveness and potential expansion of public defender services. The act extends to May 1, 2000, the deadline for both studies.

The 1999 Studies Act, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission to study a range of topics. The following criminal law issues are among the potential study topics (the number of the bill raising the issue during the 1999 legislative session and the first-named sponsor of each bill are noted):

- prohibiting the death penalty for mentally retarded persons (S 334, Ballance);
- prohibiting the death penalty obtained on the basis of race (S 991, Ballance); and
- revising the bail bond laws (S 994, Odom; H 1219, Baddour).

Local Bills

As in past sessions, the General Assembly enacted several criminal laws affecting only parts of the state. Those that affect several localities are noted below.

Photographic Images of Traffic Violations. In 1997, the General Assembly authorized the City of Charlotte to enforce violations of G.S. 20-158—essentially, failures to stop at intersections—by use of traffic control photographic systems. The 1997 act provided that the owner of the vehicle was responsible for a violation detected by a photographic system unless he or she could furnish evidence that the vehicle was in the care, custody, or control of another person at the time of the violation. A violation detected by these means was designated as a non-criminal violation of law, punishable by a civil penalty of $50.

This session, the General Assembly extended this power to the following additional areas: the cities of Fayetteville, Greensboro, High Point, Rocky Mount, and Wilmington, and the towns of Cornelius, Huntersville, and Matthews. To take advantage of this law, the municipality must adopt an ordinance authorizing use of a traffic control photographic system. The amended law also requires that warning signs be posted no more than 300 feet from the location of a photographic system and provides that a violation detected by such a system may not result in any insurance points. The changes appear in S.L. 1999-17 (H 50) and S.L. 1999-181 (H 426), as amended by

S.L. 1999-456 (H 162), sec. 48, and have various effective dates.

Electronic Collars. Effective for offenses committed on or after December 1, 1999, S.L. 1999-51 (H 371) extends to several additional counties the crime of unlawfully removing or destroying an electronic dog collar, a Class 3 misdemeanor for a first conviction and a Class 2 misdemeanor for a second or subsequent conviction. The additional counties are: Brunswick, Buncombe, Cherokee, Clay, Columbus, Davidson, Graham, Madison, Mecklenburg, Mitchell, New Hanover, and Yancey. The act brings to thirty-five the number of counties covered by the law (which appears in G.S. 14-401.17).

Fraudulent Ambulance Request. Effective for offenses committed on or after December 1, 1999, S.L. 1999-64 (S 652) extends to Durham County the crime of obtaining ambulance services without intending to pay for them, a Class 2 misdemeanor, and the crime of making unneeded ambulance requests, a Class 3 misdemeanor. The Class 2 misdemeanor, described in G.S. 14-111.2, now will apply to forty-two counties, and the Class 3 misdemeanor, in G.S. 114-111.3, will apply to nineteen counties.

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